EXHIBIT 45

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PAETEC COMMUNICATIONS, INC., et al.
v.
MCI COMMUNICATIONS SERVICES, INC. d/b/a Verizon Business Services, et al.

Civil Action No. 09-1639.

United States District Court,
E.D. Pennsylvania.

April 26, 2010.

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MEMORANDUM

DALZELL, District Judge.

Plaintiffs [1] have brought this action against defendants MCI Communications Services, Inc., d/b/a Verizon Business Services and Verizon Global Networks, Inc. (collectively, "Verizon"). Specifically, PAETEC claims that: (1) Verizon failed to pay PAETEC for telecommunications charges under PAETEC's federal tariffs in violation of federal law, (2) Verizon has failed to pay PAETEC for telecommunications charges under PAETEC's state tariffs in violation of state law, (3) Verizon was unjustly enriched, and defendants should pay at least (4) quantum meruit. PAETEC also seeks a declaratory judgment that it lawfully assessed, and may continue to assess, the switched access charges at issue.

Verizon counterclaims that PAETEC's charges were in excess of those permitted under federal law and the terms of its own federal tariff. Verizon seeks a declaratory judgment that it is not obliged to pay

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PAETEC under PAETEC's federal tariff for the amounts Verizon has disputed.

PAETEC has moved for summary judgment to require Verizon to pay all tariff charges or, if we deem the tariffs to be unlawful, to require Verizon to at least pay the benchmark rate or the reasonable value of its access services. Verizon has moved for partial summary judgment on liability.

I. *Factual Background* [2]

PAETEC is a landline telephone company that provides local telephone service to consumers and businesses. Stip. at ¶ 1. A telephone carrier such as PAETEC that provides local exchange service is known as a local exchange carrier ("LEC"). Stip. at ¶ 2. A carrier that transmits long-distance calls between the networks of two LECS is commonly referred to as an "interexchange carrier" or "IXC". Stip. at ¶ 3. Verizon is, among other things, an IXC. Stip. at ¶ 8.

In the telecommunications industry, switched access service (or access service) allows an IXC to access an LEC's network in order to "originate or terminate" [3] long-distance calls to and from "end-users" (parties who make or receive telephone calls). Stip. at ¶ 4. PAETEC permits long-distance carriers to access its network in order to originate or terminate long-distance telephone calls involving PAETEC's end-user customers. Stip. at ¶ 5.

There are two types of LECs. The original, established carriers, who existed before Congress enacted the Telecommunications Act of 1996 ("TCA" or the "1996 Act") (which amended the Federal Communications Act of 1934), are known as incumbent LECs ("ILECs"). LECs who entered the marketplace after the 1996 Act took effect compete with ILECs and each other and are known as competitive LECs ("CLECs"). Stip. at ¶ 6. PAETEC is a CLEC. Stip. at ¶ 7. ILECs and CLECs compete for end-user customers. Stip. at ¶ 94.

For the period at issue-roughly, from the middle of 2006 until now-Verizon delivered traffic to PAETEC end-users over PAETEC's network, or received traffic from PAETEC's end-users over PAETEC's network. PAETEC permitted Verizon to access its network to complete long-distance calls to PAETEC's end-user customers, and to originate long distance calls that PAETEC's end-user customers place. Stip. at ¶ 12. The rates, terms, and conditions for the interstate switched access services PAETEC offers (long distance calls that originate in one state and terminate in another state) are contained in PAETEC's FCC Tariff No. 3 filed with the FCC. Stip. at ¶ 13. The rates, terms, and conditions on which local exchange carriers offer intrastate switched access services are contained in tariffs filed with the relevant state public utility commissions. Stip. at ¶ 14.

The traffic at issue in this case-for which Verizon has disputed PAETEC's invoices-is limited to interstate traffic where the long distance call is destined for, or originated by, a PAETEC end-user customer. Verizon also withheld payment of invoices for *intra* state switched access, but it did so solely to recover what it viewed as prior overpayments to PAETEC for PAETEC's invoices for *inter* state switched access service. Verizon does not dispute the merits of any of PAETEC's intrastate charges. Stip. at ¶ 15.

Unlike an ILEC, which typically uses a "hub and spoke" arrangement of switches

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that serves a relatively smaller geographic area, PAETEC uses a single switch that branches out both in long loops (which connect the CLEC's switch to end-users) to end-users over a wide geographic area, and also branches out in long lines ("trunks") to multiple ILEC tandems, to deliver access services to IXCs. Stip. at ¶ 43. PAETEC's network serves a geographically dispersed and specialized customer base (medium-sized businesses). Stip. at ¶ 44. Compared to a typical ILEC network, PAETEC uses fewer switches and longer transport lines to serve larger geographic areas. A single PAETEC switch connects to end-users spread over a wider geographic area than an ILEC end-office switch serving the same general area. Stip. at ¶ 45.

PAETEC does not own or operate any tandem switches (which route calls between end-office switches and do not connect directly to end-user customers' premises), and when Verizon routed the traffic at issue to PAETEC, although some of the traffic went through an LEC's tandem switch, PAETEC did not switch that traffic twice before delivering it to a PAETEC end-user customer. Stip. at ¶¶ 29, 46-47, Def. Ans. and Counterclaim at ¶ 27. When Verizon delivers traffic to PAETEC over a direct connection, the traffic is not routed through a tandem switch before PAETEC delivers the traffic to its end-user customers. Stip. at ¶ 49.

PAETEC's FCC Tariff No. 3 sets forth the rates, terms, and conditions for the interstate switched access services that PAETEC offers. From July 5, 2006 to the present, Rate Attachment B to PAETEC's FCC Tariff No. 3 sets forth rates for Switched Access Service ("SWAS") and Switched Access Service (Direct Connect) ("SWAS-DC"). Stip. at ¶ 63. In or about June of 2006, PAETEC concluded that the "CLEC Benchmark" allowed a CLEC to charge a rate for interstate

switched access service that was equal to the sum of all of the applicable ILEC rate elements, including, among other things, tandem switching. Stip. at ¶ 65.

The "CLEC Benchmark" is the maximum permissible tariffed rate that can be charged under FCC rules for CLEC interstate switched access service. Stip. at ¶ 112. PAETEC amended its FCC Tariff No. 3, effective July of 2006 (the "July 2006 Amendment"), the effect of which was to charge Verizon a composite, aggregate rate for SWAS and SWAS-DC services. The SWAS rate applied if PAETEC provided an IXC access to its local network through an indirect connection (by routing through another LEC's tandem switch); the SWAS-DC rate applied when the customer or IXC directly connected to PAETEC's switch. Stip. at ¶ 68.

Although the July 2006 Amendment's composite rate did not include a charge for "tandem switching", when PAETEC amended the tariff again the next month, it increased the composite rates for SWAS and SWAS-DC service to include the price of the tandem switching rate element. Stip. at ¶¶ 69, 74-75. Thus, PAETEC increased its SWAS-DC rates so that they equalled the sum of the ILECs' "local switching" [4] rate element plus the ILECs' "tandem switching" rate element. Stip. at ¶ 75. Since July 5, 2006, PAETEC has charged its SWAS rate for situations where the IXC connects to PAETEC's switch through an ILEC tandem. Since July 5, 2006, PAETEC has charged its SWAS-DC rate in situations where the IXC directly connects to PAETEC's switch without connecting through an ILEC tandem. Stip. at ¶ 76. No PAETEC invoice for interstate switched access services where PAETEC's end-users received or originated the calls, and issued to Verizon after PAETEC's July 2006

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Amendment, contained a separate charge for the tandem switching. Stip. at ¶ 77. Since the July 2006 Amendment, PAETEC has billed a composite aggregate charge for SWAS and SWAS-DC without breaking out the individual rate elements. Stip. at ¶ 78. All of the calls at issue here were routed to PAETEC's end-user customers over a single PAETEC switch. Stip. at ¶¶ 11-12, 43, 46-49. To the extent that a second LEC switch was involved in routing the calls, that switch was a tandem switch owned by an ILEC. *Id.*

This language has been in PAETEC's tariff in its current form since April 25, 2006:

> All bills are presumed accurate, and shall be binding on the Customer, and such Customer shall be deemed to have waived the right to dispute the charges unless written notice of the disputed charge(s) is received by the Company within 90 days of the invoice date listed on the bill. To be effective, the written notice of the dispute must contain sufficient information to enable the Company to investigate the dispute, including the account number under which the bill has been rendered, the date of the bill, and the specific items on the bill being disputed.

Stip. at ¶ 97. In questioning PAETEC's invoices and withholding payment, Verizon disputes whether the amount PAETEC charged for interstate switched access services was in compliance with what Verizon calculated should have been charged under the CLEC Benchmark. Stip. at ¶ 102. The Network Financial Operations Group at Verizon has continuously existed since January of 2006, and has created, and keeps up to date, charts that contain the composite rate that, pursuant to Verizon's calculations, is the maximum a CLEC can tariff consistent with the applicable FCC regulations. Verizon then compares that calculated rate with the rate a CLEC, like PAETEC, charged, to determine whether the CLEC's rate exceeds the maximum rate a CLEC can tariff. Stip. at ¶ 104.

On October 10, 2006, Verizon raised questions about PAETEC's SWAS rates. Verizon did not file a dispute with PAETEC at that time. Stip. at ¶ 105. PAETEC responded the next day. Stip. at ¶ 106. Between July 2006 and May 2008, Verizon paid PAETEC's invoices for its SWAS and SWAS-DC rates. Stip. at ¶ 110. In the course of discovery, PAETEC was unable to

determine, and could find no evidence of, whether it provided Verizon with a spreadsheet prior to this litigation showing how PAETEC calculated the SWAS or SWAS-DC rates it charged Verizon starting in July of 2006. Stip. at ¶ 114.

In mid-2008, Verizon decided to dispute the rate differential between the amount PAETEC charged and the amount that Verizon calculated should have been charged under the CLEC Benchmark. Stip. at ¶ 115. Verizon first disputed PAETEC's charges for interstate switched access service in June of 2008 when it disputed charges related to Billing Account Number ("BAN") 4716D6963. This particular BAN covered charges PAETEC assessed for calls delivered to (or originated by) PAETEC customers in Maryland. Stip. at ¶ 116. In determining whether to dispute a CLEC's invoice, Verizon looks to see whether the CLEC routes the traffic through one or two switches before delivering the traffic to the CLEC's end-user where the CLEC's rate includes an amount equal to that which an ILEC would charge for tandem switching. Stip. at ¶ 118.

Verizon argues that PAETEC has been charging it for tandem switching and transport between a tandem switch and PAETEC's end-office switching, even though PAETEC is not performing tandem switching and, in some cases, is not

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performing any (or all) of the transport. Counterclaim at ¶ 21. Verizon further alleges that even if PAETEC were providing the interstate switched access services for which it purports to bill, PAETEC is charging more for those services than is allowed under the terms of its federal tariff and the applicable FCC rules capping the tariffed interstate access charge rates of CLECs like PAETEC. *Id.* at ¶ 23.

PAETEC contends that the FCC allows CLECs to charge for the complete access service without regard to the individual components of the connections. PAETEC claims that the amount that Verizon has withheld in interstate and intrastate switched access tariffs is $4.9 million and counting. Compl. at ¶ 31. In disputing PAETEC's invoices, Verizon calculated the dollar value of the pending dispute as the difference between what PAETEC charged for interstate switched access services and what Verizon calculated PAETEC was permitted to charge under the CLEC Benchmark. Stip. at ¶ 57. Verizon claims that PAETEC has overcharged it by more than $5.3 million. Counterclaim at ¶ 24.

The crux of this case turns on whether the FCC allows CLECs to charge for the equivalent of tandem switching even though CLECs are not using their own tandem switches to connect IXCs to their end-users, or, in the case of direct connect access services, using no tandem switch at all.

PAETEC argues in its motion for summary judgment that (1) Verizon should have to pay all tariff charges up to the date of an adverse decision because PAETEC's tariffs are conclusively "deemed lawful", (2) PAETEC is entitled to summary judgment on all claims because PAETEC's tariff complies with the Benchmark, (3) PAETEC is entitled either to the Benchmark rate or the reasonable value of its access services, (4) if this Court determines there are unresolved telecommunications policy issues concerning calculation of the Benchmark, then we should sever and refer the issue of the prospective application of PAETEC's tariff to the original jurisdiction of the FCC, but still grant PAETEC final summary judgment applying PAETEC's tariff until an adverse decision, if any, by the FCC, and (5) that Verizon's claims are largely time-barred or waived under applicable law.

Verizon contends in its motion for partial summary judgment that (1) under federal law, a CLEC that routes its end-user customers' calls through a single switch cannot tariff a rate that includes both end-office and tandem switching charges, (2) Verizon is entitled to partial summary judgment on liability because PAETEC's overcharges violate its tariff and federal law, and (3) Verizon is entitled to partial summary judgment because PAETEC had no lawful tariff on file with the FCC and charged for services not in its tariff.

II. *Analysis* [5]

We are called upon to interpret the FCC's Benchmark rate and whether PAETEC has complied with it. If we find that

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any part of the FCC's guidance is unclear, that portion of the case will be referred to the FCC's original jurisdiction for further clarification. First, however, we must address a few threshold issues.

A. PAETEC's Tariff Is Not Void *Ab Initio*

Verizon contends that PAETEC's cross-reference to 47 C.F.R. § 61.26, which its tariff contained until November of 2008, violated 47 C.F.R. § 61.74(a), thereby rendering PAETEC's tariff void *ab initio.* Section 61.74(a) dictates that "no tariff publication filed with the Commission may make reference to any other tariff publication or to any other document or instrument." PAETEC's FCC Tariff No. 3 § 3.1 contains the following clause: "Notwithstanding any other provision of this tariff, the rate for Switched Access Service shall equal the maximum rate permitted under 47 C.F.R. § 61.26." Stip. Ex. 7.

We find that violations of 47 C.F.R. § 61.74(a) do not render the tariff void *ab initio,* but, rather, "[f]ailure to comply with any provisions of these rules *may* be grounds for rejection of the non-complying publication, a determination that it is unlawful or other action." 47 C.F.R. § 61.1(b) (emphasis added). *Global NAPs, Inc. v. FCC*, 247 F.3d 252 (D.C.Cir.2001) , upon which Verizon relies, is inapposite. There, the FCC had already declared the tariff void *ab initio* because it impermissibly cross-referenced an interconnection agreement between the parties, and our Court of Appeals upheld the agency's ruling. Here, the FCC has not rejected PAETEC's tariff. Indeed, the FCC has made no adverse determination with regard to PAETEC's tariff, and we find no support for the proposition that a "cross-reference" to the governing law should render a tariff void *ab initio.*

Verizon also claims that, because PAETEC's federal tariff defined SWAS as a service that "provides for the use of Company switching equipment and network services for connecting an End User's premises with a Customer point of presence," and defined the "Company" as PAETEC, the "Customer" as a long-distance carrier, and the "End User" as PAETEC's end-user customers, the tariff was unclear and charged for services not rendered-specifically, tandem switching. [6]

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Verizon contends that PAETEC never solely provided for the use of company switching equipment and network services because PAETEC routed the calls through another ILEC's tandem switch whenever it provided SWAS services. Def.'s Mem. of Law in Supp. of Part. Mot. for S.J. ("D.M.S.J.") at 26-27. Because we find below that the FCC has carved out an exception for CLECs using another LEC's tandem switch, and that CLECs may charge a composite rate that includes the equivalent of the tandem switching rate element in its SWAS charges, we find that PAETEC's tariff was not inappropriate or unclear.

B. The Benchmark

The Benchmark is codified in 47 C.F.R. § 61.26. Section 61.26(a)(3) defines interstate switched exchange access service as including "the functional equivalent of the ILEC interstate exchange access services typically associated with following rate elements: carrier common line (originating); carrier common line (terminating); local end office switching; interconnection charge; information surcharge; tandem switched transport termination (fixed); tandem switched transport facility (per mile); *tandem switching* " (emphasis added).

PAETEC argues that the Benchmark permits CLECs to charge the full amount that ILECs charge for access service, including the ILEC tandem switching rate element, even if the CLEC is using a tandem switch that is not its own, or is using some access method that entirely circumvents the need for a tandem switch. Pl.'s Mem. of Law in Sup. of M.S.J. ("P.M.S.J.") at 24; Pl.'s Resp. to Def.'s Mot. for Part. S.J. ("Pl. Resp.") at 3. Verizon responds that a CLEC may only charge for the tandem switching rate element when it performs both functions-that is, both tandem (switch-to-switch) and end-office (switch-to-end-user-customer) switching-using two separate switches, and where it actually owns both switches. D.M.S.J. at 14.

Although there is only one "benchmark" codified in the TCA, the FCC differentiates between SWAS and SWAS-DC services. SWAS service is an indirect connection through an ILEC tandem (which then flows through to a second, end-office switch), and SWAS-DC service is a direct connection to a CLEC's end-users through only one switch (the end-office switch), Stip. at ¶ 68; Ex. 8. PAETEC claims that its SWAS-DC service provides access to the same geographic area that historically could only be served by two switches (a tandem switch and an end-office switch). P.M.S.J. at 8. PAETEC also claims that the FCC has ruled that CLECs may charge for the functional equivalent of tandem switching for both SWAS and SWAS-DC services, and therefore it may lawfully charge the same rate for both. Verizon contends that the FCC has ruled that CLECs may only charge by the switch, PAETEC has only been using one switch (that it owns) for each of these services, and therefore PAETEC is charging too much when it charges for both. Based on the FCC's clarifications, we see a third possibility which is that CLECs could charge by the switch as long as the call is being routed through both a tandem switch and a local switch, regardless of who owns the tandem switch; CLECs could on this alternative charge for both switches.

The issue now is (1) whether PAETEC can include in its SWAS charge a tandem switching element even though it is providing the service through another ILEC's tandem switch, and (2) whether PAETEC can charge for the equivalent of two switches-worth of service even though, while it may be servicing the same geographic area as two switches, it is only

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using one physical switch for its SWAS-DC access services.

1. The SWAS Benchmark Rate

In the FCC's Seventh Report [7] , the Agency notes that "CLECs should not be deprived of revenue streams available to the incumbent monopolists with which they compete ... by moving the CLEC access tariffs to the competing ILEC rate, we intend to permit CLECs to receive revenues equivalent to those the ILECs receive *from IXCs,* whether they are expressed as per-minute or flat-rate charges." Seventh Report at ¶ 54 (internal quotation marks and citations omitted). The FCC clarified that its "benchmark rate for CLEC switched access does not require any particular rate elements or rate structure ... so long as the composite rate does not exceed the benchmark." *Id.* at ¶ 55.

In the FCC's Eighth Report [8] , in response to Qwest Communications International Inc.'s request for clarification [9] that a CLEC "may tariff its access service charges at the total switched access rate of the competing ILEC only to the extent the CLEC itself is providing each of the services necessary to originate and terminate interexchange calls," the FCC stated:

> When a competitive LEC originates or terminates traffic to its own end-users, it is providing the functional equivalent of those services, even if the call is routed from the competitive LEC to the IXC through an incumbent LEC tandem. Consequently, because there may be situations when a competitive LEC does not provide the entire connection between the end-user and the IXC, but is nevertheless providing the functional equivalent of the incumbent LEC's interstate exchange access services, we deny Qwest's petition. Eighth Report at ¶ 13.

Thus, the FCC held that where the calls are being routed through two switches, even if one of the switches belongs to an ILEC, the CLEC is providing the functional equivalent of the full switched access services and may charge the full benchmark rate. The FCC noted that when reading paragraph 55 of the Seventh Report "in conjunction with the definition contained in section 61.26(a)(3), we think the two lists of elements described in paragraph 55 were intended to illustrate what might be considered the 'functional equivalent' of incumbent LEC access services, rather than mandating the provision of a particular set of services." [10] Eighth Report

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at ¶ 13 n. 48. The FCC continued: "a competitive LEC that provides access to its own end-users is providing the functional equivalent of the services associated with the rate elements listed in section 61.26(a)(3) and therefore is entitled to the full benchmark rate." *Id.* at ¶ 15.

We agree with PAETEC that the FCC intended its analysis of the Qwest request for clarification to apply both to the transitional rates and to the final benchmark rate. *Id.* at ¶ 19. Thus, we find that where a CLEC routes calls to its end-users through a tandem switch, whether it owns that tandem switch or not, it may charge the full benchmark rate for that service. PAETEC has not violated the FCC's benchmark by charging Verizon for the functional equivalent of the tandem switching rate and the end-office switching rate for its SWAS access services.

2. The SWAS-DC Benchmark Rate

With regard to the SWAS-DC access service, which only involves one switch but may cover a geographic area equivalent to the area that can be served by a tandem switch, PAETEC claims that the FCC has ruled that it can charge the equivalent of a tandem switching element for this service as well because "it is the function of providing access that matters." P.M.S.J. at 31. Verizon refutes this by pointing to the FCC's response to NewSouth's request for clarification in the Eighth Report. [11]

NewSouth argued that CLECs should be permitted to charge for all of the competing ILEC access elements (including tandem switching and end-office switching) if its switch serves a geographic area comparable to the competing ILEC's tandem switch in an analogous fashion to the way that tandem functionality was applied in the "reciprocal compensation" context. [12] Eighth Report at ¶ 20. The FCC explicitly rejected NewSouth's proposed clarification. Instead, the FCC clarified that its long-standing policy has been to allow ILECs to charge only for those elements of service that it actually provides, and "if an incumbent LEC switch is capable of performing both tandem and end office functions, [13] the applicable switching rate

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should reflect only the function(s) actually provided to the IXC. We believe that a similar policy should apply to competitive LECs." *Id.* at ¶ 21. The FCC continued that the ILEC switching rate encompasses the end-office switching rate when a CLEC originates or terminates calls to end-users and the tandem switching rate when a CLEC passes calls between two other carriers. *Id.*

Supporting our finding that CLECs may charge for tandem switching even when they use an ILEC's tandem switch, the FCC clarified that "[c]ompetitive LECs also have, and always had, the ability to charge for common transport when they provide it, including when they subtend an incumbent LEC tandem switch. Competitive LECs that impose such charges should calculate the rate in a manner that reasonably approximates the competing incumbent LEC rate." *Id.*

In the Cox Clarification Order, [14] the FCC reiterated its position that CLECs may charge the end-office switching rate when they originate or terminate calls to end-users, and the tandem switching rate when they pass calls between two other carriers, and that when a CLEC performs both functions, it may charge for both. Stip. Ex. 6. The FCC clarified that this decision is based on the "assumption that a Competitive LEC will permit an IXC to install direct trunking from the IXC's

point of presence to the competitive LEC's end office, thereby bypassing any tandem function. So long as an IXC may elect to direct trunk to the competitive LEC end offices, and thereby avoid the tandem switching function and associated charges, there should be limited incentive for competitive LECs to route calls unnecessarily through multiple switches." *Id.*

PAETEC admits that it set the composite rate for SWASDC (which uses direct trunking) to equal the combined dollar values of the ILEC local switching and tandem switching elements' rates. [15] P.M.S.J. at 11. The FCC has clearly stated that the geographic area analysis does not apply to the direct trunking context and therefore PAETEC has been charging above the benchmark rate for its SWAS-DC access service.

C. The 90-Day Dispute Resolution Provision

PAETEC claims that most of Verizon's claims fail because PAETEC's tariff contains a 90-day waiver provision in which any charge disputes must be submitted within 90 days of receiving the invoice. Verizon claims that PAETEC cannot assert this defense because of issue preclusion.

The issue of PAETEC's 90-day dispute resolution provision arose previously in the Eastern District of Virginia. In that case,

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MCI WorldCom Network Services, Inc. v. Paetec Communications, Inc., No. 04-1479, 2005 WL 2145499, at *5 (E.D.Va. Aug. 31, 2005), the court issued an order wherein it found that the 90-day dispute resolution provision in PAETEC's tariff could not preempt the federal statute of limitations in the context of a tariff because the terms of a tariff are not negotiated like the terms of a contract. If a term in the tariff could supersede the statute of limitations, it would mean that a carrier could "unilaterally void federally codified consumer protections simply by filing a tariff." *MCI WorldCom Network Servs., Inc. v. PAETEC Communications, Inc.,* No. 04-1479, Slip. Op. at 2 (E.D.Va. Mar. 16, 2005) (order denying motion for partial summary judgment). The Fourth Circuit affirmed. *MCI Worldcom Network Services, Inc. v. Paetec Communications, Inc.,* 204 Fed.Appx. 271, 272 (4th Cir.2006).

Issue preclusion applies when "(1) the issue sought to be precluded [is] the same as that involved in the prior action; (2) that issue [was] actually litigated; (3) it [was] determined by a final and valid judgment; and (4) the determination [was] essential to the prior judgment." *Peloro v. United States,* 488 F.3d 163 , 175 (3d Cir.2007) (internal quotation marks omitted). We apply federal common law principles of issue preclusion because we are examining the issue preclusive effect of a prior federal court action. *Id.* at 175 n. 11. Under the modern doctrine of non-mutual issue preclusion, a litigant may also be estopped from advancing a position that it has presented and lost in a prior proceeding against a different adversary. *Id.*

This was indeed the same issue that was addressed in the prior Virginia action. The issue was actually litigated (and appealed), was determined by a final and valid judgment, and was essential to the prior judgment. PAETEC Communications, Inc., was the only one of the current plaintiffs involved in that prior action, but we find that there is privity between the rest of the plaintiffs here and PAETEC Communications, Inc. In any event, PAETEC does not dispute Verizon's allegations of privity. Therefore, PAETEC is collaterally estopped from claiming that the 90-day dispute provision in its tariff bars Verizon's claims. And even if we did not find that PAETEC was estopped from asserting this defense, we would find that the Fourth Circuit's ruling on this matter was persuasive.

D. The Voluntary Payment Doctrine

PAETEC also claims that Verizon's claims for refunds fail because of the voluntary payment doctrine, which dictates that money deliberately and voluntarily paid, with knowledge or means of knowledge of the material facts and without fraud or duress, even if paid under a mistake of law as to the obligation to pay, cannot be recovered back.

This issue was also addressed in *MCI WorldCom Network Services, Inc. v. Paetec Communications, Inc.,* No. 04-1479, 2005 WL 2145499, at *5 (E.D.Va. Aug. 31, 2005) and affirmed on appeal. The district court found that the filed rate doctrine bars equitable relief in this context. The filed rate doctrine prohibits a carrier from collecting charges for services that are not described in its tariff. *Amer. Tel. & Tel. Co. v. Central Office Tel., Inc.,* 524 U.S. 214 , 222, 118 S.Ct. 1956 , 141 L.Ed.2d 222 (1998) . The FCC has carved out an exception for CLECs that make use of an ILEC's tandem switch, but made no such exception for the connection that CLECs may provide with direct trunking.

PAETEC admits that it calculated the rate for SWAS-DC to be the combined dollar amounts of the ILEC local switching and tandem switching elements, and this is not permissible under the filed rate doctrine. PAETEC based its arguments before the Eastern District of Virginia and

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the Fourth Circuit on Virginia law and here they base their argument on Pennsylvania law. But the principle is the same. We find that PAETEC's voluntary payment argument has no merit.

E. The Statute of Limitations

Because we find in favor of PAETEC with respect to its SWAS access charges, the following statute of limitations analysis will only apply to PAETEC's SWAS-DC access charges. PAETEC admits that it set the composite rate for SWAS-DC to equal the combined dollar values of the ILEC local switching and tandem switching elements' rates effective August 2, 2006. P.M.S.J. at 11; Stip. at ¶¶ 73-74.

Verizon argues that its counterclaims are compulsory, *i.e.,* they arise out of the same transactions as the original claim and therefore they are treated for statute of limitations purposes as having been filed on April 17, 2009, the day PAETEC filed its complaint. The rule regarding compulsory counterclaims, however, only tolls the statute of limitations if the lawsuit itself was brought within the limitations period. “[I]f defendant's claim already is barred when plaintiff brings suit, the notion of tolling the statute is inapplicable and the fact that the tardily asserted claim is a compulsory counterclaim does not serve to revive defendant's right to assert it.” 6 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 1419 (2d ed. 2010). We must therefore still determine whether PAETEC brought this action within Verizon's limitations period.

Verizon argues that until November 7, 2008, PAETEC's tariff stated that its SWAS-DC rate would equal the maximum rate allowed under the FCC's benchmark. D.M.P.S.J. at 17. We have held that PAETEC, when it calculated its composite SWAS-DC rate as the tandem switching rate plus the end-office switching rate, charged a rate in excess of the maximum rate allowed for its SWAS-DC charges. Thus, Verizon's claims-that until November 7, 2008 (when PAETEC deleted the “notwithstanding” clause from its tariff) PAETEC charged in excess of the amount it said it would in its tariff-are, in essence, claims for overcharges.

47 U.S.C. § 415(c) sets the applicable statute of limitations for claims of overcharges. Section 415(c) states, “For recovery of overcharges action at law shall be begun or complaint filed with the Commission against carriers within two years from the time the cause of action accrues, and not after ... except that if claim for the overcharge has been presented in writing to the carrier within the two-year period of limitation said period shall be extended to include two years from the time notice in writing is given by the carrier to the claimant of disallowance of the claim, or any part or parts thereof, specified in the notice.”

Verizon claims that it began notifying PAETEC of its overcharge claims in 2008, but it is not possible for us to tell from the evidence provided which disputes related to the SWAS charges and which related to the SWAS-DC charges. What we know for sure, however, is that Verizon asserts that it was overcharged between April 17, 2007 and November 7, 2008. Those claims are therefore timely. For the period between August 2, 2006 and April 17, 2007, to the extent that Verizon has claims of overcharges for SWAS-DC access services, the parties will have to brief the issue in more depth before we can rule on those claims.

After November 7, 2008, 47 U.S.C. § 415(b) applies to Verizon's claims that PAETEC's SWAS-DC rates are unreasonable. Section 415(b) provides, "All complaints against carriers for the recovery of damages not based on overcharges shall be

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filed with the Commission within two years from the time the cause of action accrues, and not after, subject to subsection (d) of this section." Those claims are timely because they are compulsory, and PAETEC filed this action on April 17, 2009.

Thus, all of Verizon's claims are timely, with the possible exception of claims for overcharges on the SWAS-DC charges that accrued between August 2, 2006 and April 17, 2007.

F. "Deemed Lawful"

PAETEC claims that Verizon cannot collect a refund on any prior charges because its rates were "deemed lawful" when they were filed in accordance with 47 U.S.C. § 204(a)(3). Section 204(a)(3) states, "[a] local exchange carrier may file with the Commission a new or revised charge, classification, regulation, or practice on a streamlined basis. Any such charge, classification, regulation, or practice shall be *deemed lawful* and shall be effective 7 days (in the case of a reduction in rates) or 15 days (in the case of an increase in rates) after the date on which it is filed with the Commission unless the Commission takes action under paragraph (1) before the end of that 7-day or 15-day period, as is appropriate." (emphasis added). "Notice is accomplished by filing the proposed tariff changes with the Commission. Any period of notice specified in this section begins on and includes the date the tariff is received by the Commission, but does not include the effective date." 47 C.F.R. § 61.58(a)(1).

Although a rate is "legal" when it is filed with the FCC and becomes effective, the rate's legality is not enough to establish its "lawfulness". To be precise, "[a] carrier charging a merely *legal* rate may be subject to refund liability if customers can later show that the rate was unreasonable". *ACS of Anchorage, Inc. v. FCC*, 290 F.3d 403 , 411 (D.C.Cir.2002) (emphasis in original). If the FCC declares a rate to be lawful, however, refunds are impermissible as a form of retroactive ratemaking. *Id.* A streamlined tariff that takes effect without prior suspension or investigation is conclusively presumed to be reasonable and thus a lawful tariff, and if a later reexamination shows the tariffs to be unreasonable, the available remedies are prospective only. *Id.*

Verizon claims that PAETEC's December 2008 tariff amendment was filed too late to be deemed lawful and in support thereof submits a copy of the tariff received by the FCC bearing a December 10, 2008 date stamp. [16] Def.'s Mot. For Leave to File a Supplemental Decl. ("Def. Supp."), Ex. B at unnumbered pages 2 and 3. The tariff amendment stipulates, "[t]hese tariff revisions bear an issue date of December 9, 2008 and an effective date of December 24, 2008." Stip. Ex. 16 at 1. PAETEC submits three sworn declarations-one from John T. Ambrosi, Vice-President of Vendor Relations of PAETEC Communications, Inc., and two from Katherine Hoagland, Regulatory and Tariff Analyst at PAETEC's headquarters in Fairport, NY. Ambrosi declared, under penalty of perjury, that "[a]ll of the PAETEC rates and tariff changes at issue in this case were filed pursuant to Section 204(a)(3) of the Communications Act."

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Decl. of John T. Ambrosi in Sup. of Pl.'s Mot. for S.J. at ¶ 14. Ms. Hoagland declared that she sent the tariff revisions for filing to the FCC's Secretary in Washington, D.C., by commercial overnight mail, and that the letters with the time stamps on them are not the same letters that she sent to the FCC. Decl. Of Katherine Hoagland at ¶¶ 3-4.

PAETEC responds to Verizon's motion for leave to file a supplemental declaration with its own supplemental declaration from Ms. Hoagland in which she swears that she sent the FCC the December 2008 tariff amendment by overnight mail on December 8, 2008. PAETEC submits with her declaration a printout from the FedEx Web site showing that it was shipped "standard overnight" on December 8, 2008, somehow bypassing its intended destination, and landing on December 10, 2008, at 9300 E. Hampton Drive. The tariff amendment bears the date stamp, "Received & Inspected DEC 10, 2008 FCC Mail Room". Def. Supp., Ex. B at unnumbered page 2.

Thus, it appears that the December 2008 tariff amendments are not in compliance with § 204(a)(3) and cannot be deemed lawful. Because PAETEC otherwise complied with § 204(a)(3), the rest of PAETEC's tariff amendments are deemed lawful.

Because we find that PAETEC's SWAS-DC charges beginning on December 24, 2008 are not deemed lawful and are not reasonable, Verizon's claims with regard to charges levied between December 24, 2008 and today can be assessed in their entirety and Verizon is entitled to a refund on those charges.

With regard to the rest of Verizon's claims on charges that were deemed lawful, Verizon argues that because PAETEC charged an amount for SWAS-DC access services in excess of the benchmark, those charges must be subject to mandatory detariffing. [17] In the Seventh Report, the FCC conducted a forbearance analysis for those CLEC interstate access services for which the aggregate charges exceed the benchmark. Seventh Report at ¶¶ 82-87. The FCC stated,

> [A] CLEC must negotiate with an IXC to reach a contractual agreement before it can charge that IXC access rates above the benchmark. During the pendency of these negotiations, or to the extent the parties cannot agree, the CLEC may charge the IXC only the benchmark rate. In order to implement this approach, we adopt mandatory detariffing for access rates in excess of the benchmark. That is, we exercise our statutory authority to forbear from the enforcement of our tariff rules and the Act's tariff requirements for CLEC access services priced above our benchmark.
> Seventh Report at ¶ 82. The FCC does not explain, however, how "mandatory detariffing" should be implemented or whether it should be implemented in this context.

The selection above from the Seventh Report seems to suggest that mandatory detariffing is something that a CLEC enters into willingly in the interest of trying

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to negotiate a rate above the benchmark. There is no indication that the FCC intended to make "mandatory detariffing" a retroactive punishment for charging a rate in excess of the one specified in a tariff.

There are (at least) two things going on here. The first is that PAETEC charged a rate in excess of the one it defined in its tariff-specifically, it defined its SWAS-DC rate as not being greater than a certain level, but then charged more than that. If that rate had still been less than the benchmark, there would be no question that PAETEC's rates would be protected under the "deemed lawful" provision in § 204(a)(3) for most of its charges. But the second reality is that PAETEC also charged a rate *above* the benchmark. What is unclear is whether the FCC

intended to apply retroactive mandatory detariffing to this situation or merely to forbear enforcing the tariff rules-namely, § 204(a)(3)'s “deemed lawful” provision. At this juncture, we also cannot rule out the possibility that PAETEC's charges above the benchmark continue to be sheltered from refund liability by § 204(a)(3). It is also not out of the realm of possibility that the FCC could fashion an as-yet unimagined hybrid of the foregoing.

We will invite the parties to brief this issue and inform us whether they believe the FCC has squarely addressed this issue. If not, they shall advise us whether this is an issue that should be referred to the FCC's original jurisdiction.

III. *Conclusion*

We find that PAETEC's SWAS charges comply with the Benchmark but that its SWAS-DC charges do not. But there remain two outstanding issues upon which we will order the parties to submit briefs: (1) Whether the FCC has clearly stated how mandatory detariffing applies to CLECs that have charged above the benchmark rate, whether this requires an invalidation of the entire tariff at issue or merely exposes CLECs to refund liability, and whether, if the FCC has not squarely addressed this issue, it should be referred to the FCC's original jurisdiction, and (2) whether Verizon's claims for overcharges from the period between August 2, 2006 and April 17, 2007 are barred by the statute of limitations.

We will therefore grant PAETEC's motion for summary judgment with regard to the SWAS charges, but deny it with regard to the SWAS-DC charges. We will deny Verizon's motion for partial summary judgment in part and grant it in part as to the SWAS-DC-related claims from April 17, 2007 to the present. [18]

ORDER

AND NOW, this 26th day of April, 2010, upon consideration of plaintiffs' [1] motion for summary judgment (docket entry # 27), defendants MCI Communications Services, Inc., d/b/a Verizon Business Services and Verizon Global Networks, Inc.'s

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(collectively, “Verizon”) motion for partial summary judgment (docket entry # 26), the responses thereto, Verizon's motion for leave to file a supplemental declaration (docket entry # 30), and PAETEC's response thereto (docket entry # 31), and in accordance with the accompanying Memorandum, it is hereby ORDERED that:

1. PAETEC's motion for summary judgment is GRANTED IN PART and DENIED IN PART as described in the foregoing Memorandum;

2. Verizon's motion for partial summary judgment is DENIED IN PART but GRANTED IN PART insofar as it relates to the SWAS-DC-related claims from April 17, 2007 to the present, all in accordance with the foregoing Memorandum; [2]

3. Verizon's motion for leave to file a supplemental declaration is GRANTED;

4. The parties shall by May 28, 2010 SUBMIT their views as to whether mediation before Judge Hart would likely be productive;

5. Further scheduling shall abide the resolution of the mediation question; and

6. In the meantime, the Clerk of Court shall TRANSFER this case from our Active docket to our Civil Suspense docket.

Notes:

1. PAETEC Communications, Inc., PAETEC Communications of Virginia, Inc., U.S. LEC Communications Inc d/b/a PAETEC Business Services, U.S. LEC of Pennsylvania LLC d/b/a PAETEC Business Services, U.S. LEC of Virginia LLC d/b/a PAETEC Business Services, U.S. LEC of Maryland LLC d/b/a PAETEC Business Services, U.S. LEC of Alabama LLC d/b/a PAETEC Business Services, U.S. LEC of Georgia LLC d/b/a PAETEC Business Services, U.S. LEC of South Carolina d/b/a PAETEC Business Services, and U.S. LEC of Tennessee Inc. d/b/a PAETEC Business Services (collectively, "PAETEC").

2. The parties submitted a joint stipulation of facts ("Stip.") on February 23, 2010.

3. Though this is the locution the parties use, palpably "terminate" must mean *complete,* as in "one completes the call."

4. This term is synonymous with "end-office switching".

5. Summary judgment is appropriate when the "pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c)(2). On cross-motions for summary judgment, we will construe the facts and draw inferences "in favor of the party against whom the motion under consideration is made." *Pichler v. UNITE,* 542 F.3d 380 , 386 (3d Cir.2008) (internal citations and quotation marks omitted). Whenever a factual issue arises which cannot be resolved without a credibility determination, the Court must credit the non-moving party's evidence over that presented by the moving party. *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242 , 255, 106 S.Ct. 2505 , 91 L.Ed.2d 202 (1986) .

The moving party bears the initial burden of proving that there is no genuine issue of material fact in dispute. *Matsushita Elec. Indus. Co. Ltd. v. Zenith Radio Corp.,* 475 U.S. 574 , 585, 106 S.Ct. 1348 , 89 L.Ed.2d 538 (1986) . Once the moving party carries this burden, the nonmoving party must "come forward with 'specific facts showing there is a genuine issue for trial.' " *Id.* at 587, 106 S.Ct. 1348 (quoting Fed.R.Civ.P. 56(e)). The non-moving party must present something more than mere allegations, general denials, vague statements, or suspicions. *Trap Rock Indus., Inc. v. Local 825,* 982 F.2d 884 , 890 (3d Cir.1992); *Fireman's Ins. Co. of Newark v. DuFresne,* 676 F.2d 965 , 969 (3d Cir.1982). It is not enough to discredit the moving party's evidence, the non-moving party is also required to "present affirmative evidence in order to defeat a properly supported motion for summary judgment." *Liberty Lobby,* 477 U.S. at 257 , 106 S.Ct. 2505 . A proper motion for summary judgment will not be defeated by merely colorable evidence or evidence that is not significantly probative. *See Liberty Lobby,* 477 U.S. at 249-50 , 106 S.Ct. 2505 . "[T]he burden on the moving party may be discharged by 'showing'... that there is an absence of evidence to support the nonmoving party's case." *Celotex Corp. v. Catrett,* 477 U.S. 317 , 325, 106 S.Ct. 2548 , 91 L.Ed.2d 265 (1986) .

6. PAETEC modified its tariff in November of 2009. Section 3.2.1 now reads: "SWAS provides for the use of Company switching equipment and network services to provide Switched Access Service where the Customer point of presence is connected indirectly to PAETEC's network through a tandem switch or functionally similar equipment controlled by a third party such as an incumbent local exchange carrier." Stip. Ex. 17.

7. Seventh Report and Order and Further Notice of Proposed Rulemaking, Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers, 16 FCC Rcd. 9923 (2001) ("Seventh Report").

8. Eighth Report and Order and Fifth Order on Reconsideration, Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers; Petition of Z-Tel Communications, Inc. for Temporary Waiver of Commission Rule 61.26(d) to Facilitate Deployment of Competitive Service in Certain Metropolitan Statistical Areas, 19 FCC Rcd. 9108 (2004) ("Eighth Report").

9. *Qwest Communications Corp. v. Farmers and Merchants Mutual Telephone Co.,* 22 FCC Rcd. 17973 (2007).

10. Paragraph 55 reads, in part, "there are certain basic services that make up interstate switched access service offered by most carriers. Switched access service typically entails: (1) a connection between the caller and the local switch, (2) a connection between the LEC switch and the serving wire center (often referred to as 'interoffice transport'), and (3) an entrance facility which connects the serving wire center and the long distance company's point of presence. Using traditional ILEC nomenclature, it appears that most CLECs seek compensation for the same basic elements, however precisely named: (1) common line charges; (2) local switching; and (3) transport. The only requirement is that the aggregate charge for these services, however described in their tariffs, cannot exceed our benchmark." Seventh Report at ¶ 55.

11. PAETEC argues the *NewSouth* and *Cox* clarifications cut in its favor, but that if we find that those clarifications do not bolster its position, then the clarifications must be inconsistent with the FCC's previous orders

and therefore do not possess the force of law because the FCC did not comply with the Administrative Procedure Act when it failed to engage in the notice and comment rulemaking required under the Act. We do not find that the clarifications are inconsistent with the FCC's prior rulings, and, regardless, we agree with Verizon that we do not have jurisdiction over PAETEC's APA claims, which, pursuant to 28 U.S.C. § 2344, are subject only to the original jurisdiction of our Court of Appeals.

12. "Reciprocal compensation" governs the exchange of local traffic between two LECs. 47 U.S.C. § 251(b)(5). In considering reciprocal compensation, our Court of Appeals noted that the FCC had acknowledged the special situation that occurs when a competing carrier's newer technology does not precisely replicate the traditional "tandem switch" routing. *SBC, Inc. v. FCC,* 414 F.3d 486 , 491 (3d Cir.2005). "Where the interconnecting carrier's switch serves a geographic area comparable to that served by the incumbent LEC's tandem switch, the appropriate proxy for the interconnecting carrier's additional costs is the LEC tandem interconnection rate. The FCC thus mandated an inquiry into the geographic area served in determining the appropriate compensation rate in some circumstances that may involve tandem switching even though the state of the competing carrier's technology might not use tandem switching to complete a given call." *Id.* at 492 (citing the FCC's *Local Competition Order,* 11 FCC Rcd. 15499, 16042 (¶ 1090) (1996)) (internal citations omitted).

13. Some ILEC switches (known as Class 4/5 switches) can perform both a tandem switching function and an end-office switching function within the same physical switch. Stip. at ¶ 30. The FCC held that "[t]he Tandem Switching rate will not apply to access minutes that originate or terminate at the end office part of a Class 4/5 switch." Eighth Report at ¶ 21, n. 71 (internal quotations marks and citations omitted).

14. Order, Access Charge Reform; PrarieWaive Telecommunications, Inc. Petition for Waiver of Sections 61.26(b) and (c) or in the Alternative, Section 61.26(b)(6) of the Commission's Rules; SouthEast Telephone, Inc. Petition for Waiver of Section 61.26(a)(6) of the Commission's Rules; Cox Communications, Inc. Petition for Clarification or Reconsideration, 23 FCC Rcd. 2556 (2008) ("Cox Clarification Order").

15. PAETEC argues that the nature of the CLEC network differs in significant ways from the ILEC networks, that these differences are not necessarily captured in the FCC telecommunications regulations, and that the SWAS-DC charge may fall into this category. *Id.* at 8. P.M.S.J. at 7. This is not something we can decide because it is reserved in the first instance for the FCC.

16. Verizon also claims that PAETEC's June 22, 2004 tariff amendment should not be deemed lawful because it was filed on only one day's notice, Def.'s Resp. at 25, but we find that the statute of limitations has run on *that* claim and Verizon may no longer assert it. Verizon's point that a carrier who "furtively employs improper accounting techniques in a tariff filing" cannot have a deemed lawful tariff is well taken, but filing a tariff amendment on one day's notice does not rise to the level of "improper accounting". *ACS of Anchorage,* 290 F.3d at 413 .

17. Verizon cites to the Memorandum Opinion and Order, *Petitions of AT & T Inc. And BellSouth Corp. For Forbearance,* 22 FCC Rcd. 18705, ¶ 42 (2007), which states that "[p]recluding [packet-switched broadband services and optical transmission services] tariffs also will restrict AT & T's ability to assert 'deemed lawful' status." This is a different kind of tariff than the one at issue here, and the FCC explicitly limited this ruling to AT & T *only.* "[W]e decline to extend the forbearance relief granted in this Order to carriers other than AT & T." *Id.* at ¶ 41.

18. Although we have clarified what we could on the record before us, we believe the parties may well best be served by participating in a mediation before our Magistrate Judge, Jacob P. Hart. Thus, before the litigants embark upon the necessary additional briefing, we shall afford them a thirty day "time out" to decide whether they wish to avail themselves of Judge Hart's demonstrated mediation skills.

1. PAETEC Communications, Inc., PAETEC Communications of Virginia, Inc., U.S. LEC Communications Inc d/b/a PAETEC Business Services, U.S. LEC of Pennsylvania LLC d/b/a PAETEC Business Services, U.S. LEC of Virginia LLC d/b/a PAETEC Business Services, U.S. LEC of Maryland LLC d/b/a PAETEC Business Services, U.S. LEC of Alabama LLC d/b/a PAETEC Business Services, U.S. LEC of Georgia LLC d/b/a PAETEC Business Services, U.S. LEC of South Carolina d/b/a PAETEC Business Services, and U.S. LEC of Tennessee Inc. d/b/a PAETEC Business Services (collectively, "PAETEC").

2. Perhaps needless to say, we have not opined on PAETEC's quantum meruit claims, which we leave to another day.

EXHIBIT 46

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PAETEC COMMUNICATIONS, INC., et al.
v.
MCI COMMUNICATIONS SERVICES, INC. d/b/a Verizon Business Services, et al.

Civil Action No. 09–1639.

United States District Court, E.D. Pennsylvania.

May 9, 2011.

[784 F.Supp.2d 543]

Scott H. Angstreich, Kiran S. Raj, Kellogg Huber Hansen Todd, Evans & Figel PLLC, Washington, DC, for MCI Communications Services, Inc., Verizon Global Networks, Inc.Alexis Arena, Flaster/Greenberg P.C., Philadelphia, PA, Darren H. Goldstein, Donna T. Urban, Flaster/Greenberg P.C., Cherry Hill, NJ, for Paetec Communications of Virginia, Inc., U.S. LEC Communications, Inc. d/b/a Paetec Business Services, U.S. LEC of Alabama LLC d/b/a Paetec Business Services, U.S. LEC of Florida LLC d/b/a Paetec Business Services, U.S. LEC of Georgia LLC d/b/a Paetec Business Services, U.S. LEC of Maryland LLC d/b/a Paetec Business Services, U.S. LEC of North Carolina Inc. d/b/a Paetec Business Services, U.S. LEC of Pennsylvania LLC d/b/a Paetec Business Services U.S. LEC of South Carolina

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LLC d/b/a Paetec Business Services, U.S. LEC of Tennessee Inc. d/b/a Paetec Business Services, U.S. LEC of Virginia LLC d/b/a Paetec Business Services.A. Richard Feldman, Bazelon Less & Feldman PC, Philadelphia, PA, for MCI Communications Services, Inc.

ORDER

STEWART DALZELL, District Judge.

AND NOW, this 9th day of May, 2011, upon consideration of defendants and counterclaim plaintiffs MCI Communications Services, Inc., d/b/a Verizon Business Services and Verizon Global Networks, Inc.'s (collectively, "Verizon") response to our October 14, 2010 Order to Show Cause ("Verizon Mem.") (docket entry # 44), plaintiffs and counterclaim defendants' [1] response to our October 14, 2010 Order ("PAETEC Mem.") (docket entry # 45), Verizon's motion for leave to file a supplemental declaration ("Verizon Resp.") (docket entry # 46), PAETEC's cross-motion for leave to file a responsive supplemental declaration, and memorandum of law in response to Verizon's motion for leave to file a supplemental declaration and in support of PAETEC's cross-motion for leave to file a responsive supplemental declaration ("PAETEC Resp.") (docket entry # 47), and the Court finding that:

(a) This case involves PAETEC's efforts to collect on its interstate switched access charges; the first four counts of PAETEC's complaint sought rulings requiring Verizon to pay amounts it had to date refused to pay; the final count sought a declaratory judgment that PAETEC had lawfully assessed and may continue to assess the switched access charges at issue;

(b) Verizon filed counterclaims that sought a ruling that Verizon was not obligated to pay the amounts it had withheld and a declaratory judgment that PAETEC had not lawfully assessed, nor should it be allowed to continue to assess, interstate switched access charges under its federal tariff for work it does not perform and/or rates in excess of the maximum rate the FCC's rules permit PAETEC to include in its federal tariff;

(c) In our April 26, 2010 Memorandum and Order, reported at 712 F.Supp.2d 405 (E.D.Pa.2010) , we held that (1) PAETEC's tariff is not void *ab initio,* (2) PAETEC's tariffed SWAS rates for all periods since August 2, 2006 complied with the Benchmark, (3) PAETEC's

tariffed SWAS–DC rates for all periods since August 2, 2006 exceeded the Benchmark, (4) PAETECs SWAS–DC rates were not deemed lawful for the period beginning December 24, 2008, [2] (5) PAETEC is collaterally estopped from relying on the 90–day dispute notice provision in its tariff to bar Verizon's claims (and that provision is in any event ineffective), and (6) PAETECs voluntary payment doctrine claim lacked merit; we did not rule on PAETECs claim of quantum meruit, nor did we rule on the amount of damages due either party, leaving those decisions for another day after the completion of damages-related discovery;

(d) In our October 14, 2010 Order, we asked the parties to show cause whether

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(1) there is any just reason for delay of the entry of Judgment as to the aspects that we decided in our April 26, 2010 Memorandum, and (2) we should refer the two remaining issues as defined in our April 26, 2010 Memorandum to the Federal Communications Commission ("FCC") for resolution, *PAETEC Communications, Inc. v. MCI Communications Services, Inc.,* C.A. No. 09–1639, Order to Show Cause (E.D.Pa. Oct. 14, 2010);

(e) We defined the two remaining issues as

(1) whether the FCC has clearly stated how mandatory detariffing applies to CLECs that have charged above the Benchmark rate, whether this requires an invalidation of the entire tariff at issue or merely exposes CLECs to refund liability, and whether, if the FCC has not squarely addressed this issue, it should be referred to the FCC's original jurisdiction, and (2) whether Verizon's claims for overcharges from the periods between August 2, 2006 and April 17, 2007 are barred by the statute of limitations.

PAETEC Communications, Inc. v. MCI Communications Services, Inc., 712 F.Supp.2d 405 , 421 (E.D.Pa.2010);

(f) In their memoranda to show cause, the parties agree that the remaining issues need not be referred to the FCC's original jurisdiction, Verizon Mem. at 10–14; PAETEC Mem. at 5–16;

(g) The parties also agree that, because we ruled on the declaratory judgment claims, we should enter final judgment pursuant to Fed.R.Civ.P. 54(b) with regard to those claims so that this matter may proceed efficiently to appeal, Verizon Mem. at 4; PAETEC Mem. at 20;

(h) PAETEC notes in its memorandum that "if the Third Circuit were to conclude that PAETEC's SWAS–DC rate complied with the Benchmark that would obviate the need to refer any issues to the FCC. Moreover, the Benchmark issues relating to both SWAS and SWAS–DC ought to be considered together on appeal since they both arise from the same body of statutory and FCC authorities," PAETEC Mem. at 20;

(i) Thus, we need only untangle the matter of mandatory detariffing to enter final judgment on the declaratory judgment claims;

(j) Verizon argues that mandatory detariffing means that because PAETEC filed its tariff on November 8, 2008 in violation of the FCC's prohibition on filing tariffs with rates in excess of the Benchmark, there was no tariff or contract in place that could compel Verizon to pay for SWAS–DC service, *id.* at 11; thus, Verizon contends that, because PAETECs tariff was in excess of the Benchmark, this requires us to invalidate the tariffed SWAS–DC rates from November 8, 2008 through July 16, 2010 (and that Verizon does not have to pay for SWAS–DC service during that time), *id.* at 12;

(k) Verizon seems to suggest that the FCC's mandatory detariffing rule automatically renders any tariff filed above the Benchmark ineffective and not entitled to "deemed lawful" protection; but although Verizon cites case law and FCC reports that show that the FCC forbids CLECs from filing tariffs above the Benchmark, it cites no authority that gives guidance regarding what a Court

should do when a CLEC *does* file a tariff above the Benchmark; nor does Verizon cite any examples of occasions where a CLEC filed a tariff above the Benchmark rate and a Court—as opposed to the FCC—found that the tariff in question was automatically rendered ineffective [3]; the parties agree that

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mandatory detariffing forbids CLECs from filing tariffs in excess of the Benchmark, but the parties vehemently disagree as to what a Court should do if a CLEC files a tariff in excess of the Benchmark, and whether that CLEC is entitled to "deemed lawful" protection;

(l) Thus, having found PAETEC's filed SWAS–DC tariffs to be above the Benchmark and therefore unreasonable, the question before us now is what is the correct course of action for a Court to take, and how does the FCC's mandatory detariffing policy interact with "deemed lawful" protection?;

(m) PAETEC argues that tariffs filed in compliance with § 204(a)(3) of the Telecommunications Act are "deemed lawful" even if they are above the Benchmark;

(n) PAETEC contends that "mandatory detariffing" is "but one form of the FCC's exercise of its authority to 'forbear' from enforcing or applying any regulation or Communications Act provision upon making the determinations required by 47 U.S.C. § 160," PAETEC Mem. at 10;

(*o*) Mandatory detariffing gives the FCC the authority to forbid carriers from filing tariffs and to require them to cancel existing tariffs, *MCI Telecommunications Corp. v. American Tel. & Tel. Co.,* **512 U. S. Reports 218** , 114 S.Ct. 2223 , 129 L.Ed.2d 182 (1994) ;

(p) Verizon argues that 47 U.S.C. § 203(c) prohibits a carrier from "charg [ing], demand[ing], collect[ing], or receiv[ing] a greater" amount than the rate in its filed tariff, Verizon Mem. at 13; Verizon claims that nothing in the "deemed lawful" provision, or any FCC or court decision construing it, allows a carrier to use the fact that it filed a tariff under 47 U.S.C. § 204(a)(3) to insulate itself from liability for charging a rate in excess of its tariffed rate, *id.;* Verizon contends instead that "deemed lawful" is a defense to refund liability where the carrier has charged its tariffed rate but the tariff itself was found unlawful, *id.;* Verizon concludes by noting that our finding that PAETEC, for a period prior to November 8, 2008, charged higher rates than its tariff permitted was not a finding that PAETEC's tariff was unlawful and therefore "deemed lawful" is irrelevant, *id.;*

(q) PAETEC argues that if the FCC intended to forbear from enforcing or applying 47 U.S.C. § 204(a)(3)'s "deemed lawful" status for any tariffed rates that were later found to have exceeded the Benchmark, it could have done so; because the FCC has never stated that it intended to render ineffective a carrier's tariffed rates' "deemed lawful" status because the rate was later found to be unreasonable or above the Benchmark, PAETEC argues that we may not now strip their August 2, 2006 to December 24, 2008 SWAS–DC tariffs of their "deemed lawful" status; and that although we found their filed SWAS–DC tariffs to be above the Benchmark beginning on November 8, 2008, the FCC's regulations do not require us to render the tariff automatically ineffective, PAETEC Mem. at 10–11;

(r) In fact, in *In the Matter of Petition of ACS of Anchorage, Inc.,* 22 F.C.C.R. 16304, 16331 (August 20, 2007), the FCC capped the switched access rates of ACS (an ILEC) at the CLEC Benchmark rate, effectively subjecting ACS to the same mandatory detariffing regime that applies

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to CLECs; but the FCC specifically ruled that deemed lawful status would still be available to ACS's rates, notwithstanding that its rates are capped at the Benchmark rate, *id.* at 16332 ("Deemed lawful status is available to all LECs, including Competitive LECs, that meet the requirements of Section 204(a)(3) of the Act, and GCI has shown no reason why deemed lawful

status should not apply in the case of ACS.");

(s) Thus, we find that this inquiry has clarified the issue of mandatory detariffing as we defined it in our April 26, 2010 Memorandum, and we now hold that PAETECs SWAS–DC rates, although being either unreasonable or above the Benchmark (or both) between August 2, 2006 and December 24, 2008, are nevertheless protected by their "deemed lawful" status under § 204(a)(3), and therefore Verizon is not entitled to a refund for PAETEC's SWAS–DC charges during that time;

(t) Verizon claims that during the parties' mediation sessions, PAETEC suggested that a third unresolved issue exists: whether "deemed lawful" is a defense to the Court's finding that PAETEC overcharged Verizon for SWAS–DC service prior to November 8, 2008, Verizon Mem. at 12; but as we have just canvassed, the issue of mandatory detariffing and "deemed lawful" status are intertwined in this context, and we could not have addressed one without addressing the other;

(u) With regard to PAETEC's unpaid SWAS charges, PAETEC argues that Verizon has withheld $8,533,216 for both SWAS and SWAS–DC, $4,351,940.46 of which is attributable to SWAS charges only, PAETEC Resp. at 8; Verizon argues that it has withheld only $3,863,594.73 in SWAS charges, Verizon Resp. at 2;

(v) PAETEC and Verizon have come to an unhappy agreement in an effort to move this case forward most efficiently—PAETEC agrees to accept Verizon's offer of $3,863,594.73 for the outstanding SWAS charges if it means that it will speed this matter along to our Court of Appeals;

(w) We left open the issue of whether Verizon's claims for a refund for SWAS–DC charges for the period August 2, 2006 to April 17, 2007 are barred by the statute of limitations; we noted that this depends upon whether Verizon adequately disputed the SWAS–DC charges in writing within two years; because we have now found that PAETEC's SWAS–DC charges during that period are protected by their "deemed lawful" status, we can deny Verizon's claim for a refund on those charges for that time period; thus, we need not consider whether Verizon's statute of limitations has run on those claims;

(x) We agree with Verizon that PAETEC argued issues in its brief, including the issue of "clawbacks," on which we did not seek briefing; we will not address those arguments here;

(y) We will now address whether we may enter a final judgment on some of the claims in this case without entering final judgment on others;

(z) Under Rule 54(b), where a suit involves multiple claims, a district court may enter final judgment on a subset of claims so long as there is "no just reason for delay," Fed.R.Civ.P. 54(b);

(aa) Deciding whether to enter final judgment pursuant to Rule 54(b) "involves two separate findings: (1) there has been a final judgment on the merits, i.e., an ultimate disposition on a cognizable claim for relief; and (2) there is 'no just reason for delay,' " *Berckeley Inv. Group, Ltd. v. Colkitt*, 455 F.3d 195 , 202 (3d Cir.2006);

(bb) With respect to the second step of the analysis, courts consider five factors:

(1) the relationship between the adjudicated and unadjudicated claims;

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(2) the possibility that the need for review might or might not be mooted by future developments in the district court;

(3) the possibility that the reviewing court might be obliged to consider the same issue a second time;

(4) the presence or absence of a claim or counterclaim which could result in set-off against the judgment sought to be made final;

(5) miscellaneous factors such as delay, economic and solvency considerations, shortening the time of trial, frivolity of competing claims, expense, and the like.

Id. at 203;

(cc) We find that:

(1) there is a distinct and separate relationship between the adjudicated and unadjudicated claims because the unadjudicated claims focus on the amount of damages the parties are entitled to recover for past conduct, and the resolution of these issues will not affect our interpretation of the FCC's rules governing the rates a CLEC tariffs for interstate switched access service; although we will leave several claims unresolved, none affect the declaratory judgment claims, *see Budinich v. Becton Dickinson & Co.,* **486 U. S. Reports 196** , 199, 108 S.Ct. 1717 , 100 L.Ed.2d 178 (1988) ("A question remaining to be decided after an order ending litigation on the merits does not prevent finality if its resolution will not alter the order or moot or revise decisions embodied in the order.");

(2) the need for review will not be mooted by future developments before this Court; the primary question on appeal will be whether we correctly interpreted the FCC's Benchmark rules, and thus subsequent rulings on damages based on past invoices will not moot this issue, which goes to the lawfulness of PAETEC's tariffed rates;

(3) this is not a case where our Court of Appeals would be obliged to review the same issues a second time-even if later rulings on thus far unresolved issues were separately appealed, our Court of Appeals would not need to decide again the meaning of the FCC's rules or the question of whether PAETEC's tariffs complied with those rules;

(4) because there is no counterclaim that would result in a set-off against the declaratory judgment sought to be made final, the fourth factor is inapplicable here; and

(5) additional factors weigh in favor of entering judgment pursuant to Rule 54(b);

(dd) As to the fifth finding, we have decided an issue important to the telecommunications industry as a matter of first impression; entering final judgment pursuant to Rule 54(b) is particularly appropriate in such cases, *see, e.g., Pichler v. UNITE,* 646 F.Supp.2d 759 , 765 (E.D.Pa.2009) (explaining, on remand, that the Court had entered judgment pursuant to Rule 54(b) on several "novel questions that were issues of first impression" in our Court of Appeals); this ruling goes beyond the parties' individual dispute because the FCC regulations at issue govern all CLECs nationwide;

(ee) Because we held that PAETEC's SWAS charges comply with the Benchmark and its SWAS–DC rates do not, we have made a final judgment on the merits with regard to the declaratory judgment claims, and we find that there is no just reason for delay, *Berckeley,* 455 F.3d at 202 ; *see also U.S. Golf Ass'n v. St. Andrews Systems Data–Max, Inc.,* 749 F.2d 1028 , 1031 n. 5 (3d Cir.1984) (upholding the finality of declaratory judgments "since the legal question presented ... has been conclusively decided"); therefore, we have ordered "an ultimate disposition of" the declaratory judgment claims;

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(ff) We may therefore enter a final judgment declaring that PAETEC's tariffed SWAS–DC rates were above the Benchmark and unreasonable to the extent that they were composed of both tandem switching and end office switching rate elements, but that the rate is protected by its "deemed lawful" status up to the filing of the December 24, 2008 tariff, which was not deemed

lawful, and that PAETEC's tariffed SWAS rates were lawful and reasonable; we find therefore that Verizon must pay PAETEC for SWAS services in the agreed-upon amount of $3,863,594.73, and is not entitled to a refund for PAETEC's SWAS–DC services until December 24, 2008, at which point PAETEC failed to file its SWAS–DC tariff in compliance with § 204(a)(3);

(gg) With regard to the other issues we decided in our April 26, 2010 Memorandum and Order, but which may not fit conformably within the confines of a Rule 54(b) certification, we will also, in order to maximize the Court of Appeals' latitude to review our April 26, 2010 Order, certify both our April 26, 2010 Order and this Order for interlocutory appeal under 28 U.S.C. § 1292(b); under § 1292(b), our Court of Appeals' review "is not limited to the specific questions certified by the District Court. Rather, [it] may address any issue fairly included within the certified order because it is the order that is appealable, and not the controlling question[s] identified by the [D]istrict [C]ourt," *NVE, Inc. v. Dep't of Health and Human Services,* 436 F.3d 182 , 196 (3d Cir.2006) (internal citations and quotation marks omitted);

(hh) Thus, we will enter a final judgment on the declaratory judgment claims, order Verizon to pay PAETEC $3,863,594.73 for the unpaid SWAS charges, and we will hold the rest of the case in abeyance pending our Court of Appeals' resolution of any appeal;

It is hereby ORDERED that:

1. The Court, finding no just reason for delay, SEVERS and ENTERS a Final Judgment with respect to the declaratory judgment claims;

2. Pursuant to 28 U.S.C. § 1292(b), we CERTIFY FOR APPEAL both our April 26, 2010 Order and this Order, which include our rulings that PAETEC's pre-November 2008 tariff was not void *ab initio,* that neither a dispute resolution provision in PAETEC's tariff nor the voluntary payment doctrine barred Verizon's claims, that Verizon's claims for the period prior to November 7, 2008 are subject to the statute of limitations in 47 U.S.C. § 415(c), that PAETEC's rates in effect since December 24, 2008 are not deemed lawful, and that PAETEC's SWAS–DC tariff filed prior to December 24, 2008 are deemed lawful;

3. Verizon shall PAY PAETEC $3,863,594.73 for unpaid SWAS charges only;

4. This Court DECLARES that PAETEC's SWAS–DC charges are "deemed lawful" and therefore are not subject to refund liability for charges levied between August 2, 2006 and December 24, 2008; and

5. The remaining claims are STAYED pending appellate review.

Notes:

[1.] PAETEC Communications, Inc., PAETEC Communications of Virginia, Inc., U.S. LEC Communications Inc d/b/a PAETEC Business Services, U.S. LEC of Pennsylvania LLC d/b/a PAETEC Business Services, U.S. LEC of Virginia LLC d/b/a PAETEC Business Services, U.S. LEC of Maryland LLC d/b/a PAETEC Business Services, U.S. LEC of Alabama LLC d/b/a PAETEC Business Services, U.S. LEC of Georgia LLC d/b/a PAETEC Business Services, U.S. LEC of South Carolina d/b/a PAETEC Business Services, and U.S. LEC of Tennessee Inc. d/b/a PAETEC Business Services (collectively, "PAETEC").

[2.] PAETEC amended the SWAS and SWAS–DC rates in its federal switched access tariff effective July, 2010 in light of our April 26, 2010 ruling.

[3.] Verizon also does not cite any instances of the FCC finding that a tariff was automatically ineffective as a result of mandatory detariffing either. Verizon does refer to *MCI WorldCom, Inc. v. Fed. Communications Comm.,* 209 F.3d 760 , 764 (D.C.Cir.2000), but in that case the Court of

Appeals discussed the mandatory and permissive detariffing regimes as they applied to the FCC's determinations regarding interexchange carriers, not local exchange carriers.

EXHIBIT 47

2015 WL 2455128
Only the Westlaw citation is currently available.
United States District Court,
N.D. Illinois, Eastern Division.

Peerless Network, Inc. et al.,
Plaintiffs–Counterclaim Defendants,
v.
MCI Communication Services, Inc., Verizon Services Corp. and Verizon Select Services Inc., Defendants–Counterclaim Plaintiffs.

No. 14 C 7417
|
Signed May 21, 2015

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Opinion

MEMORANDUM OPINION AND ORDER

Thomas M. Durkin, United States District Judge

***1** Peerless Network, Inc., et. al., ("Peerless"), sued the Defendants MCI Communication Services, Inc., Verizon Services Corp., and Verizon Select Services, Inc., (collectively "Verizon"), alleging claims of breach of contract, breach of tariffs, breach of implied contract, unjust enrichment, quantum meruit, and seeking declaratory judgments. Verizon filed four counterclaims against Peerless alleging breach of federal and state tariffs. This matter is before the Court on Verizon's motion to dismiss Counts I–II and VI–X, in full, and Counts III–V and XI–XII, in part, of Peerless's complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). R. 28. For the following reasons, the Court grants the motion in part and denies the motion in part.

Background

Peerless and Verizon are both telecommunications carriers that provide a variety of telecommunication services. R. 1 ¶¶ 7–8. Telecommunication services in the United States can be divided into two categories: (1) local exchange services and (2) interexchange services. *Id.* ¶ 15. Local exchange services involve phone calls that originate when the calling party dials the call in one exchange service area and terminate when the call is delivered to the receiving party in the same exchange service area. *Id.* Interexchange services involve phone calls that originate in one exchange area and terminate in a different exchange area. *Id.* Interexchange services can be intrastate or interstate. *Id.* Intrastate services are calls exchanged in the same state. *Id.* Interstate services are calls exchanged between multiple states. *Id.*

Many telecommunication carriers provide both local exchange and interexchange services. *Id.* ¶ 16. "Local Exchange Carriers" ("LECs") are carriers that provide local exchange services. *Id.* For purposes of this action, Verizon's local affiliates and Peerless are LECs. *Id.* "Interexchange Carriers" ("IXCs") are carriers that provide interexchange services. *Id.* For the purposes of this action, Verizon functions as an IXC. *Id.* ¶ 9.

The Federal Communications Commission ("FCC") adopted a compensation structure that requires LECs to allow IXCs to use their telephone lines to originate and terminate calls so all carriers can exchange calls between their customers. *Id.* ¶ 18. IXCs are required to compensate LECs for their use of LECs' telephone lines. *Id.* Peerless provides an example of how LECs and IXCs collaborate on long distance phone calls:

> When a consumer makes an interexchange call, the consumer's LEC originates the call, and performs transport and switching functions and delivers the call (i.e., "hands the call off") to an IXC, and the IXC then hands off the call to the terminating LEC so that the call can be delivered to the called party. A common example of [this] would be a long-distance call from Chicago to St. Louis. In that example,

> AT & T Illinois (the incumbent LEC in Chicago) performs switching functions and originates the call on its network, and hands over the call to an IXC, such as Sprint Long–Distance, which carries the call to St. Louis. Sprint then hands off the call off to AT & T Missouri (the incumbent LEC in St. Louis), which performs transport and switching functions and carries the call across its network to deliver the call to the called party.

***2** *Id.* ¶ 19. In this example, Sprint (the IXC) must compensate AT & T (the LEC) because AT & T performed switched access service by carrying the customer's call on Sprint's phone lines. Id. ¶ 20. IXCs are required to pay LECs "access charges" for "originating" and "terminating" the phone calls. Id. These access charges are set forth in negotiated contracts between IXCs and LECs, tariffs on file with the FCC, and tariffs on file with state public service commissions. *Id.*

The types of services that LECs provide to IXCs vary depending on need and function. *Id.* ¶ 26. For example, an IXC can use an LEC's tandem switch (the telephone switch that connects LEC switches to IXC switches) or an LEC's end office switch (the telephone switch that connects LEC switches to the customer's phone) to reach the end customer. *Id.* An IXC can also use an LEC's physical infrastructure (e.g., fiber optic cables) or electronic database to carry the call to and from the tandem or end office switch, which is known as "transport services." *Id.* These services are collectively known as "access services." *Id.*

On February 11, 2009, Peerless and Verizon entered into a contract ("Switched Access Agreement") under which Peerless agreed to provide access services to Verizon in certain markets. *Id.* ¶¶ 35–36. Section 3 of the Switched Access Agreement spells out the types of interstate and intrastate access service Peerless was to provide Verizon. *Id.* ¶ 36. Since February 11, 2009, the parties have amended the Switched Access Agreement four times, most recently on October 9, 2013. *Id.* ¶ 35.

The Switched Access Agreement states that any services or charges it does not govern "are subject to the applicable Peerless tariffs." R. 1–1 at 4. The FCC requires telecommunication carriers to file tariffs with the FCC that publicly display the carriers' rates for interstate and foreign telecommunication services. 47 U.S.C. § 203. Peerless filed its initial interstate access tariff with the FCC in June 2008. R. 1 ¶ 39. It subsequently cancelled and replaced the tariff three times to reflect its modified rates. *Id.*

Historically, the FCC has exercised jurisdiction over interstate calls, while each individual state's public service commission has exercised jurisdiction over intrastate calls. *Id.* ¶ 17. Generally, public service commissions require carriers to file intrastate tariffs just as the FCC does. *Id.* ¶¶ 20, 42–43. Peerless filed state tariffs with the proper public service commissions in those states where it provided intrastate access services to Verizon. *Id.* ¶ 42.

In 2013, the relationship between Peerless and Verizon broke down because Verizon disputed its bills from Peerless for switched access charges and Peerless alleged Verizon wrongfully disputed its billings. R. 29–1 at 2. On September 18, 2013, in an effort to reach an accord on Verizon's outstanding payments to Peerless, the parties entered into a new contract ("Standstill Agreement") to attempt to resolve their disputes without litigation. *Id.* Specifically, the parties created the Standstill Agreement to address Verizon's unpaid access charges under Peerless's tariffs and the Switched Access Agreement. *Id.*

In its complaint, Peerless alleges that it properly billed for the services it provided to Verizon pursuant to the Switched Access Agreement, its federal tariffs, and its state tariffs. R. 1 ¶¶ 34–36, 44–45. Peerless claims Verizon refused to make full payment for the interstate and intrastate access services Peerless provided to Verizon. *Id.* ¶¶ 47–48. Specifically, Peerless's complaint alleges Verizon refused to pay for three types of calls: (1) calls for which Peerless provided end office switching and transport services to deliver long distance calls to Verizon customers; (2) calls for which Peerless provided end office switching and transport services to deliver long distance calls originated by Verizon's customers; and (3) calls for which Peerless provided end office switching, but not transport services, to deliver long distance calls to Verizon's toll-free customers. *Id.* ¶ 34.

***3** Verizon admits that it disputed and withheld some payments owed to Peerless pursuant to Peerless's federal and state tariffs. R. 27. Verizon argues it does not

owe Peerless the withheld amounts because Peerless: (1) improperly billed Verizon its tariffed end office switched access rate for calls that were routed over the internet; (2) engaged in traffic pumping [1] by charging a federal tariffed end office switched access rate that exceeds permissible rates in Illinois; and (3) improperly billed Verizon its tariffed terminating switched access rate for international calling card services where an international telephone company–not Peerless–terminated the call. *Id.* at 36–38.

[1] Traffic pumping, also known as access stimulation, is the practice of a competitive local exchange carrier ("CLEC") generating large volumes of long distance calls for the purpose of collecting switched access revenues, which it shares with its purported customers. R. 27 at 37 ¶ 16. A carrier satisfies the elements for traffic pumping if it has one or more access revenue sharing agreements and its ratio of terminating to originating traffic exceeds a certain number. *See* 47 C.F.R. § 61.3(bbb)(1).

LECs are divided into competitive local exchange carriers ("CLEC") and incumbent local exchange carriers ("ILEC"). ILECs are usually the monopoly LEC in a geographic location, and CLECs are ILEC's "rivals" who are competing in the same market. *See Illinois Bell Tele. Co. v. Box,* 526 F.3d 1069, 1070 (7th Cir.2008). Peerless describes its subsidiaries as CLECs, R. 1 ¶ 7, but for the purposes of this motion, the distinction between a CLEC, ILEC, and LEC is irrelevant.

Furthermore, Verizon argues that the three types of calls at issue in Peerless's complaint are not covered by any provision of the Switched Access Agreement. *Id.* at 12, 16, 18. Verizon argues the three types of calls only involve end office switching services, whereas the Switched Access Agreement governed tandem switching services. R. 29 at 6–7.

Peerless also alleges that Verizon breached the Standstill Agreement by refusing to pay for access service charges due under that agreement. *Id.* ¶¶ 50–51. Peerless asserts that Verizon refused to pay for access service charges due under the Standstill Agreement because it disputes charges it previously paid under the Switched Access Agreement —before the Standstill Agreement went into effect. *Id.* Peerless argues this "clawing back" of previously paid payments violates the Standstill Agreement. *Id.*

Finally, Peerless alleges that Verizon continues to receive access services from Peerless that are covered by the Switched Access Agreement, its federal tariffs, and its state tariffs that Verizon refuses to pay for, thereby improperly receiving a benefit. *Id.* at ¶¶ 52–53, 57, 63, 71, 76, 81. Peerless alleges that Verizon's refusal to pay for such access services has damaged Peerless in excess of $1,000,000, an amount which continues to accrue each month. *Id.* ¶ 54.

Legal Standard

A Rule 12(b)(6) motion challenges the sufficiency of the complaint. *See, e.g., Hallinan v. Fraternal Order of Police of Chi. Lodge No. 7,* 570 F.3d 811, 820 (7th Cir.2009). A complaint must provide "a short and plain statement of the claim showing that the pleader is entitled to relief," Fed.R.Civ.P. 8(a)(2), sufficient to provide defendant with "fair notice" of the claim and the basis for it. *Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 555 (2007). This "standard demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft v. Iqbal,* 556 U.S. 662, 678 (2009). While "detailed factual allegations" are not required, "labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly,* 550 U.S. at 555. The complaint must "contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' " *Ashcroft,* 556 U.S. at 678 (*quoting* Twombly, 550 U.S. at 570). " 'A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.' " *Mann v. Vogel,* 707 F.3d 872, 877 (7th Cir.2013) (quoting *Iqbal,* 556 U.S. at 678). In applying this standard, the Court accepts all well-pleaded facts as true and draws all reasonable inferences in favor of the non-moving party. *Mann,* 707 F.3d at 877.

Analysis

I. Peerless Sufficiently Pleads a Cause of Action for Breach of the Switched Access Agreement.

***4** In Counts I–II, VI–IX, XI, and XII, Peerless alleges that Verizon breached the Switched Access Agreement by failing to pay originating and terminating access service charges set forth under the Switched Access Agreement. R. 1 ¶¶ 58–60. Verizon moves to dismiss Counts I and II in full and Counts VI–IX, XI, and XII in part. R. 29. Verizon claims Peerless did not plead Verizon's alleged breach

of the Switched Access Agreement with the required specificity. *Id.*

To state a cause of action for a breach of contract under Illinois law, a plaintiff must allege four elements: (1) a valid and enforceable contract exists, (2) substantial performance by the plaintiff, (3) breach by the defendant, and (4) damages resulting from defendant's breach. *Reger Dev., LLC v. Nat'l City Bank,* 592 F.3d 759, 764 (7th Cir.2010) (citations omitted). There is no dispute that the Switched Access Agreement is a valid and enforceable contract. Peerless has also sufficiently pled damages by alleging that Verizon refused to pay for three types of calls covered under the Switched Access Agreement, resulting in damages in excess of one million dollars. R. 1 ¶ 54.

Verizon argues that Peerless's breach of contract claim fails for two reasons. First, Verizon disputes that the end office switching services for which Verizon allegedly owes payment are covered by the Switched Access Agreement. R. 29. Verizon argues that the three types of calls in dispute that are described in Peerless's complaint do not involve any type of tandem switching service. *Id.* Verizon interprets the Switched Access Agreement to govern only Peerless's tandem switching services to Verizon, not its end office switching services. *Id.* at 6–7. According to Verizon, the only form of service Peerless provides Verizon in those three types of calls is end office switching. *Id.* Thus, Verizon argues Peerless has not alleged that Verizon failed to pay for a service under the Switched Access Agreement. *Id.*

Peerless disputes this argument. While it does not explicitly argue that the Switched Access Agreement covers only tandem services, it contends that the services it provided Verizon with respect to the three types of calls included tandem service functions that are covered by Section 3 of the Switched Access Agreement. R. 39 at 45. Peerless argues that some of the functions it performed in completing the three types of disputed calls are functions covered by Section 3 of the Switched Access Agreement —including services that may be tandem switching services. *Id.* at 5. Peerless calls Verizon's argument that the complaint–in referring to the disputed calls —only identifies tariffed end office switching services, "disingenuous." *Id.*

Despite its assertion that it provided tandem services that are covered by the Switched Access Agreement, Peerless admits it cannot identify without more discovery the specific services it provided on each call and whether the service created a charge due under the Switched Access Agreement or instead, under one of Peerless's tariffs. *Id.* at 4. At oral argument before the Court on February 12, 2015 and in its response, Peerless stressed that the nature of phone records makes it difficult at this stage of litigation to determine what function Peerless provided on each call. *Id.* However, Peerless argues that through discovery, it can examine records to determine what functions were provided, the appropriate rate for those functions, and which charges Verizon owes Peerless for those functions under the Switched Access Agreement. *Id.*

***5** Because the Court must accept all well-pleaded facts as true and draw all reasonable inferences in favor of Peerless, the Court finds that Peerless has sufficiently pled that the Switched Access Agreement governs at least some of the unpaid tandem services Peerless provided to Verizon. *Mann,* 707 F.3d at 877. R. 1 ¶ 36. Peerless alleges that the Switched Access Agreement covers "certain interstate and intrastate access service[s]" Peerless was to provide to Verizon. Section 3 of the Switched Access Agreement describes the access service functions that Peerless provided to Verizon and Peerless has sufficiently pled that at least some of the unpaid services Peerless provided to Verizon are covered by the functions in Section 3. Furthermore, the discovery process will enable Peerless to investigate and identify with specificity which charges are allegedly due under the Switched Access Agreement.

As its second ground for dismissing Peerless's claim that it breached the Switched Access Agreement, Verizon argues that Peerless has not provided fair notice of which unpaid charges violated the Switched Access Agreement because Peerless has not pled which provisions of the Switched Access Agreement Verizon allegedly violated. R. 29. Peerless argues that it does not need to recite "verbatim" the contract provisions that Verizon breached in order to properly state a claim. R. 39 at 6.

While Peerless attached the Switched Access Agreement to its complaint, it did not identify specific provisions that Verizon allegedly breached. The law on the issue of whether it is necessary to cite specific contract provisions to state a claim for breach of contract is divided in this district. *See e.g., Int'l Capital Group v. Starrs,* No. 10 C 3275, 2010 WL 3307345, at *1 (N.D.Ill. Aug. 19,

2010) (noting that judges in this district have "come out both ways on" whether a complaint must identify a particular contract provision that was breached before concluding that a plaintiff "is not required to identify a specific contract provision that was breached in order to plead breach of contract under the federal pleading standard, but a plaintiff must still plead enough facts to establish a breach, for example, the existence of some unsatisfied obligation"); *Urlacher v. Dreams, Inc.,* No. 09 C 6591, 2010 WL 669449, at *2 (N.D.Ill. Feb. 22, 2010) ("[Plaintiff] is not required at the pleading stage to identify the exact provision of the Agreement that [Defendant] violated."); *Carlson v. Nielsen,* No. 13 C 5207, 2014 WL 4771669, at *4 (N.D.Ill. Sept. 24, 2014) (citing *Urlacher,* 2010 WL 669449, at *2 for the same proposition); *see also Cont'l Cas. Co. v. Duckson,* No. 11 C 00459, 2011 WL 2293873, at *3 (N.D. Ill. June 9, 2011); *but see Gandhi v. Sitara Capital Mgmt., LLC,* 689 F.Supp.2d 1004, 1016 (N.D.Ill.2010) ("By not identifying in their complaint the provision of the [contract] allegedly breached, plaintiffs fail to satisfy" the low threshold in Rule 8(2)(a).); *Burke v. 401 N. Wabash Venture, LLC,* No. 08 C 5330, 2010 WL 2330334, at *2 (N.D. Ill. June 9, 2010) ("The Court fails to see how, post-*Iqbal,* a plaintiff could state a claim for breach of contract without alleging which provision of the contract was breached.").

The Court finds useful the analysis in *In re Ameriquest Mortg. Co. Mortg. Lending Practices Litig.,* 589 F.Supp.2d 987, 991 (N.D.Ill.2008), in which the court denied defendant's motion to dismiss for failure to specify the contractual provision the plaintiff allegedly breached. *In re Ameriquest* involved a contractual dispute between the plaintiff mortgage company and a group of mortgage broker defendants who allegedly failed to comply with contractual duties when closing mortgage loans. *Id.* at 989. The plaintiff did not cite contract provisions in its complaint because there were hundreds of contracts at issue. *Id.* at 990. Instead, the plaintiff created a chart summarizing the information for each contract that the defendants allegedly breached (i.e., names of relevant borrower plaintiffs who had sued Ameriquest, case information for those underlying suits, third-party defendants involved in disputed transactions, and approximate dates of agreements between the third-party defendants). *Id.* at 990–91. The court held that although the complaint and accompanying chart did "not offer much detail on the terms of the contracts," it still "plainly allege[d][the] Third Party Defendants had a contractual duty to provide" services to the plaintiff. *Id.* at 991. The court further noted that the complaint's allegations were "sufficient to give Third Party Defendants fair notice of the contract actions against them and enable them to conduct a meaningful investigation into such claims and possible defenses." *Id.* While *In re Ameriquest* is not controlling, it is persuasive. *Estate of Warner v. U.S.,* 743 F.Supp. 551, 556 (N.D.Ill.1990) ("though it is true that District Court decisions ... do not constitute binding precedent, they *can* of course be persuasive") (emphasis in original).

***6** Verizon cites three cases where the court required the plaintiffs to identify specific contract provisions to state a claim for breach of contract. *Tsitsopoulou v. Univ. of Notre Dame,* No. 2:10–CV–309, 2011 WL 839669, at *5 (N.D.Ind. Mar. 7, 2011); *GYP, LLC v. Wells Fargo & Co.,* No. 1:13 CV 01482, 2013 WL 5353799, at *3 (N.D.Ohio Sep. 24, 2013); *Wolff v. Rare Medium, Inc.,* 171 F.Supp.2d 354, 358–59 (S.D.N.Y.2001). All three cases are distinguishable and outside of this district.

In *Wells Fargo,* the plaintiff did not attach to the complaint the loan agreement on which the breach of contract claim was premised. 2013 WL 5353799, at *1. The plaintiff did not specify any terms of the contract or specify any terms that the defendant allegedly breached. *Id.* Additionally, plaintiff's counsel admitted to never having seen a copy of the loan agreement, and defendant's counsel also did not possess a copy of the agreement. *Id.*

In *Tsitsopoulou,* the plaintiff filed suit against the University of Notre Dame for wrongful termination. 2011 WL 839669, at *1. The defendant attached a copy of the plaintiff's most recent employment contract (referenced in her complaint), but the Court held it was "undisputed" the contract was already terminated. *Id.* at *1 n. 2, *5. The plaintiff then attempted to base her argument in response to the defendant's motion to dismiss on Notre Dame's Faculty Handbook, which she did not attach to her complaint. *Id.* The court rejected the plaintiff's "convoluted argument" that the University breached a "contract" by not following a provision in the Faculty Handbook. *Id.* The court dismissed the plaintiff's breach of contract claim because "most importantly," the plaintiff's complaint only referred to a terminated employment contract. *Id.* The court held the plaintiff could not claim in her response that the breach of contract

was based upon a different document than the one referenced in her complaint. *Id.*

In *Wolff,* although the plaintiff attached the contract to his complaint, the court dismissed the plaintiff's breach of contract claim because the plaintiff failed to identify the contract provisions at issue. 171 F.Supp.2d at 358. However, that case came out of the Southern District of New York and cited another New York district court case for its contention that plaintiffs are required to cite the contract provisions. *Id.* at 358 (citing *Levy v. Bessemer Trust Co., N.A.,* No. 97 Civ. 1785(JFK), 1997 WL 431079, at *5 (S.D.N.Y. July 30, 1997)). As noted, this district has been inconsistent with respect to that issue. *Starrs,* 2010 WL 3307345, at *1. Additionally, the *Wolff* court cited the fact that the plaintiff failed to provide the defendant notice of the nature of its alleged breach. *Id.* at 358–59.

Verizon's cited authority is unavailing. As articulated in Peerless's complaint, Peerless and Verizon's history of conducting business together since 2008 renders less plausible Verizon's claim it does not know how it breached the Switched Access Agreement. *See* R. 39. Additionally, both parties previously attempted to settle their dispute over payments under the Switched Access Agreement and Peerless's tariffs through the Standstill Agreement. Most recently, during oral argument on February 12, 2015, Verizon's counsel admitted that there had been correspondence between the two parties over the disputed charges stemming from the Switched Access Agreement in Peerless's complaint. Also, Verizon can use contention interrogatories or requests to admit in order identify the specific provisions at issue.

***7** Therefore, the Court finds that Peerless has sufficiently pled a claim for a breach of contract under Illinois law and denies Verizon's motion to dismiss Counts III in full and XI–XII in part. *Reger Dev.,* 592 F.3d at 764; *Mann,* 707 F.3d at 877. Although Peerless does not specify what provisions of the Switched Access Agreement Verizon allegedly breached, Peerless alleges sufficient facts to put the defendants on notice of their alleged breach of the Switched Access Agreement. R. 1 ¶ 34. Peerless describes the services it provided in the three types of calls it believes are covered under the Switched Access Agreement that Verizon refused to pay for and attaches the Switched Access Agreement to its complaint. *Id.* ¶¶ 34, 37. Peerless has thus alleged enough facts to put Verizon on fair notice of the "contractual duty" it breached. *In re Ameriquest,* 589 F.Supp.2d at 991. Peerless does not need to be anymore specific at this stage of litigation. *See Dempsey v. Nathan,* No. 14 CV 812, 2014 WL 4914466, at *8 (N.D.Ill. Sept. 30, 2014); *In re Ameriquest,* 589 F.Supp.2d at 989; *Urlacher,* 2010 WL 669449, at *2; *Starrs,* 2010 WL 3307345, at *1.

Of course, moving forward in proving its claims, Peerless will be required to respond to Verizon's discovery requests related to the breach of the Switched Access Agreement in compliance with Rule 26 of the Federal Rules of Civil Procedure.

II. Peerless Fails to Sufficiently Plead a Cause of Action for Breach of the Confidential Standstill Agreement.

In Count X, Peerless alleges that Verizon breached the Standstill Agreement in three ways: (1) refusing to pay access service charges billed by Peerless since the effective date of the Standstill Agreement; (2) disputing previously made payments for access service charges with no proper or legal justification; and (3) clawing-back previously paid access charges by not paying for current charges. R. 1 ¶ 132. In other words, Peerless alleges that Verizon attempted to recoup its prior payments for access services charges from before the creation of the Standstill Agreement, and by not paying access service charges due after the creation of the Standstill Agreement, tried to "claw back" those payments. R. 39. Verizon moves to dismiss Count X because Peerless has not identified any specific provisions of the Standstill Agreement that Verizon allegedly breached. R. 29.

The only element in dispute is whether Verizon breached the Standstill Agreement. [2] Peerless alleges that Verizon's practice of clawing back prior payments breached Section 2(b) of the Standstill Agreement. R. 39. Section 2(b) states:

> Peerless may continue to bill Verizon for certain intercarrier compensation charges that it contends in good faith apply to services rendered by Peerless to Verizon (the "Peerless New Charges"), and Verizon shall pay any such charges that are not subject to a good faith dispute, but Verizon may dispute and withhold payment of any such charges as to which Verizon brings a good faith dispute.

> Verizon shall state with specificity the basis of any good faith dispute (*e.g.* that the charges do not apply given the nature of the jurisdiction, that the call detail records do not support the charge or that the charges are inconsistent with law).

R. 29–1 at 3. Peerless argues that Verizon's claw-back of prior payments violated this section of the Standstill Agreement because Verizon withheld payment with "no proper or legal justification." R. 1 ¶ 132. Peerless argues "Verizon's bad faith conduct is clearly described in [¶ 132]" of its complaint. R. 39 at 9. Thus, Peerless argues that they have pled enough facts to allege that Verizon breached Section 2(b) of the Standstill Agreement. *Id.*

2 The elements of a contract under New York law, which, as Verizon points out in reply, governs the Standstill Agreement, R. 29–1 at 6, are the same as those under Illinois law. *VFS Fin., Inc. v. Falcon Fifty LLC,* 17 F.Supp.3d 372, 379 (S.D.N.Y.2014) (noting that the elements of breach under New York law—contract existence, performance, breach, and damages—are well established).

***8** Verizon argues that Peerless fails to allege any facts indicating "that Verizon's disputes and refusals to pay post-agreements invoices were raised in bad faith." R. 29 at 8. Verizon argues that the Standstill Agreement was silent with respect to Verizon's ability to dispute charges on previously paid bills that were invoiced *before* the Standstill Agreement went into effect. *Id.* at 7–8. Thus, Verizon argues the Standstill Agreement did not bar Verizon from "withhold[ing] payments to recoup past overpayments." *Id.* at 8. Consequently, Verizon argues that Peerless's complaint is deficient because it does not identify a provision of the contract Verizon allegedly breached. *Id.*

For this count, the Court finds that Peerless fails to properly state a claim that Verizon breached the Standstill Agreement. The conduct Peerless alleges does not violate Section 2(b) of the Standstill Agreement. By its plain language, Section 2(b) allows Verizon to dispute in good faith access service charges that Peerless billed. R. 29–1. Nothing on the face of the Standstill Agreement prohibits Verizon from disputing charges paid before the effective date of the Standstill Agreement. R. 29–1; *see Villa Health Care, Inc. v. Illinois Health Care Mgmt. II, LLC,* No. 12–3205, 2013 WL 3864418, at *2 (N.D.Ill. July 25, 2013) ("If the contractual language is unambiguous, then the court will ... interpret the contract according to its plain meaning"). Furthermore, Peerless's only allegation that Verizon withheld the "clawed back" charges in bad faith is that Verizon had "no proper or legal justification" to claw back prior payments. R. 1 ¶ 132. Without more, this is a conclusory allegation that is insufficient to state a claim for breach of contract. *Twombly,* 550 U.S. at 555 ("labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do").

Therefore, the Court grants Verizon's motion to dismiss Count X for failure to state a claim for breach of the Standstill Agreement. The Court dismisses Count X without prejudice.

III. The Filed Rate Doctrine Bars Peerless's Equitable Causes of Action.

In Counts VI–IX, Peerless asserts four equitable causes of action in the alternative in the event the Court finds the Switched Access Agreement and Peerless's tariffs do not apply to cover the services involved with the calls at issue in the breach of contract claim. R. 1 ¶¶ 86, 100, 114, 122. Counts VI and VII assert a cause of action for breach of an implied contract; Count VIII asserts a cause of action for unjust enrichment; and Count IX asserts a cause of action for quantum meruit. *Id.*

Verizon argues that if the Court finds the charges in Counts VI–IX fall outside of the Switched Access Agreement and Peerless's tariffs, then the filed rate doctrine bars Counts VI–IX as a matter of law. R. 29 at 11. The filed rate doctrine forbids courts from determining the reasonableness of a tariff rate, altering a rate filed with a regulatory agency, or awarding a plaintiff damages that are different from a filed rate. *See e.g., Arsberry v. Illinois,* 244 F.3d 558, 562 (7th Cir.2001); *Schilke v. Wachovia Mortg., FSB,* 820 F.Supp.2d 825, 835 (N.D.Ill.2011).

Verizon argues the filed rate doctrine bars Peerless's equitable causes of action in light of the FCC's decision in *AT & T Corp. v. All American Tele. Co.,* 28 F.C.C. Rcd 3477, 3493–94 (rel. Mar. 25, 2013), subsequent to which federal district courts have dismissed equitable claims whether or not the charges at issue are covered by a negotiated contract or valid tariff. *See e.g., XChange Telecom Corp. v. Sprint Spectrum L.P.,* No. 1:14–cv–54, 2014 WL 4637042, at *1 (N.D.N.Y. Sept. 16, 2014);

CallerID4u, Inc. v. MCI Commc'ns Servs., Inc., No. 14 CV 654, at 42 (W.D. Wash. Nov. 5, 2014) (R. 29, Ex. 3); *see also Connect Insured Tel., Inc. v. Qwest Long Distance, Inc.,* No. 3:10–CV–1897–D, 2012 WL 2995063, at *11 (N.D.Tex. July 23, 2012) (granting summary judgment that filed rate doctrine bars unjust enrichment claim because "charging for switched access services without a filed interstate tariff or negotiated contract constitutes an unjust and unreasonable charge under [47 U.S.C. 23] § 201(b)").

***9** In *XChange,* the plaintiff, a CLEC, sued the defendant, an IXC, for unpaid interstate and intrastate access charges under numerous causes of action including breach of contract, breach of federal and state tariffs, unjust enrichment, and breach of implied contract. 2014 WL 4637042, at *1. The plaintiff sought to recover charges for access services provided before it filed a tariff and for those provided after its tariff was on file with the FCC. *Id.* at *2–3. The parties did not have a contract governing the access services at issue. *Id.* The plaintiff argued that the law did not bar pleading an unjust enrichment or quasi-contract claim for those services provided before it filed the tariff because the defendant unjustly benefited from plaintiff's services without payment. *Id.* at *5. The court rejected the plaintiff's argument and granted the defendant's motion to dismiss the claim for charges before the filing of the tariff "[b]ecause carriers are obligated under the [FCA] and FCC interpretations to either submit schedules setting forth the applicable rates for interstate access charges ... or negotiate such rates directly with other carriers." *Id.* at *6. The plaintiff was unable to "avoid these requirements by instead asserting equitable claims for unpaid charges." *Id.*

In *CallerID4u,* the plaintiff, a CLEC, sought to recover unpaid access service charges from the defendant, an IXC, for a time period prior to when the plaintiff filed its tariff. No. C14–654–TSZ, at 39–40. The court held the plaintiff could not recover under implied contract, quantum meruit, or any other equitable claim because the filed rate doctrine preempted the equitable claims. *Id.* at 42. The court cited *All American,* which held that "unless a carrier files a valid interstate tariff under Section 203 of the [FCA], or enters into contract which have been interpreted as negotiated contracts with [interexchange carriers] for the access services, it lacks authority to bill for those services." *Id.* (citing 28 F.C.C. Rcd at 3493–94). Thus, the court granted the defendant's motion to dismiss because the filed rate doctrine prohibited the plaintiff from recovering unpaid access charges before the plaintiff filed its tariff. *CallerID4u,* No. C14–654–TSZ, at 42.

Peerless argues the filed rate doctrine does not bar its equitable claims because the FCC allows telecommunication carriers to "recover charges relating to tandem and end office switched access that fall outside those covered by tariffs or negotiated agreements." R. 39 at 12. Peerless cites FCC cases to support its position. *See Qwest Commc'ns Corp. v. Farmers & Merch. Mut. Tel. Co.,* 24 F.C.C. Rcd. 14801, 14813, (rel. Nov. 25, 2009); *In re All Am. Tel. Co. v. AT & T Corp.,* 26 F.C.C. Rcd. 723, 731 (rel. Jan. 20, 2011). However, these FCC decisions were decided prior to the 2013 FCC decision in *All American,* and Peerless has failed to address why *All American* should not apply to this case.

Additionally, Peerless cites district court cases to suggest the filed rate doctrine does not bar claims for services that are not governed by a tariff or negotiated contract. R. 39 at 15 (citing *F.T.C. v. Verity Intern, Ltd.*, 443 F.3d 48, 62 (2d Cir.2006)). However, the cases Peerless cites, all prior to the 2013 FCC decision in *All American,* are irrelevant to the facts of this case. In *F.T.C. v. Verity Intern, Ltd.,* the plaintiff attempted to recover charges for information services, not telecommunication services. 443 F.3d at 62. In *Brown v. MCI WorldCom Network Servs., Inc.,* the issue was not whether the filed rate doctrine permitted plaintiffs to recover charges outside of a tariff or contract. 277 F.3d 1166, 1171–72 (9th Cir.2002). The plaintiff in *Brown* merely claimed the defendant wrongly charged him a fee under the defendant's tariff. *Id.* In *Iowa Network Servs., Inc. v. Qwest Corp.,* the court held the filed rate doctrine did not apply to the plaintiff's claim because the telecommunication services at issue were solely intrastate. 466 F.3d 1091, 1095–96 (8th Cir.2006). The holdings in *Verity Intern, Brown,* and *Quest* do not support the argument that telecommunication carriers can recover for access service charges outside of a filed tariff or negotiated contract.

***10** As noted, while *XChange* and *CallerID4u* are not controlling, the Court finds their analyses to be helpful and relevant to the facts at issue. Peerless's equitable claims attempt to recover for access service charges outside of the Switched Access Agreement, Peerless's FCC interstate tariffs, and Peerless's state tariffs. R. 1 ¶¶ 86, 100, 114, 122. The Court finds that the filed rate doctrine bars

Peerless from the recovering the equitable relief it seeks–charges outside of a filed tariff or negotiated contract. *XChange,* 2014 WL 4637042, at *6; *CallerID4u,* No. C14–654–TSZ, at 42; *Qwest,* 2012 WL 2995063, at *11; *All American,* 28 F.C.C. Rcd 3477 at 3493–94. Therefore, the Court grants Verizon's motion to dismiss Counts VI–IX. The Court dismisses Counts VI–IX with prejudice.

IV. Verizon's Motion to Dismiss Counts III–V and XI–XII is Denied as Moot Insofar as Peerless Purports to State a Claim for Violation of the FCA.

Verizon moves to dismiss Counts III–V and XI–XII insofar as the counts purport to state a cause of action under the Federal Communications Act ("FCA"). R. 29 at 12–13. Specifically, Verizon's motion to dismiss refers to Peerless's reliance on 47 U.S.C. § 207 of the FCA as a source of jurisdiction for its action in addition to federal question jurisdiction under 28 U.S.C. § 1331, R. 29. Section 207 of the FCA provides "[a]ny person claiming to be damaged by any common carrier ... may either make complaint to the [FCC] ... [or] in any district court of the United States." 47 U.S.C. § 207.

Although Peerless cites 47 U.S.C. § 207 for jurisdictional purposes, it does not rely on 47 U.S.C. § 207 for any of the causes of action in its complaint. R. 1 ¶ 11. Furthermore, Peerless concedes in its response to Verizon's motion to dismiss that it does "not seek any cause of action alleging violation of the [FCA]. Indeed, the sole reference to ... [§ 207] occurs only with respect to the Court's jurisdiction over carrier collection actions." R. 39 at 14. Most recently, during oral argument on February 12, 2015, Peerless again conceded it is neither asserting a cause of action under the FCA nor seeking to shift attorneys' fees under the FCA. Due to Peerless's repeated concessions, no real controversy exists about whether Peerless is attempting to bring a cause of action under § 207 of the FCA. Therefore, Verizon's motion to dismiss Counts III–V and XI–XII insofar as the counts purport to state a cause of action under the FCA is denied as moot.

Conclusion

For the foregoing reasons, the Court grants Verizon's motion to dismiss in part and denies the motion in part. The Court denies Verizon's motion to dismiss Counts I–II, in full, and Counts XI–XII, in part, for failure to state a claim for breach of the Switched Access Agreement. The Court grants Verizon's motion to dismiss Count X for failure to state a claim for breach of the Standstill Agreement without prejudice. Should Peerless wish to file an amended complaint repleading Count X, it must do so within 30 days, by June 22, 2015. The Court grants Verizon's motion to dismiss Counts VI–IX with prejudice. Finally, the Court denies Verizon's motion to dismiss Counts III–V and Counts XI–XII, insofar as they purport to state a claim for violation of the FCA, as moot.

All Citations

Not Reported in F.Supp.3d, 2015 WL 2455128

Footnotes

EXHIBIT 48

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Operator Communications, Inc.,	)	
	)	
Complainant,	)	
	)	
v.	)	
	)	
Contel of the South, Inc. d/b/a Verizon Mid-States, Verizon California Inc., The Micronesian Telecommunications Corporation, Verizon Delaware Inc., Verizon Florida Inc., Verizon Maryland Inc., Verizon New England Inc., Verizon New York Inc., Verizon New Jersey Inc., Verizon North Inc., Verizon Northwest Inc., Verizon South Inc., Verizon Pennsylvania Inc., GTE Southwest Inc., Verizon Washington, D.C. Inc., and Verizon West Virginia, Inc.,	)	File No. EB-05-MD-009
	)	
Defendants.	)	
	)	

MEMORANDUM OPINION AND ORDER

Adopted: December 9, 2005 **Released: December 9, 2005**

By the Commission:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we dismiss a formal complaint[1] filed by Operator Communications, Inc. ("OCI") against the Verizon Telephone Companies[2] pursuant to section

[1] Formal Complaint of Operator Communications, Inc., File No. EB-05-MD-009 (filed June 3, 2005) ("Formal Complaint").

[2] Contel of the South, Inc. d/b/a Verizon Mid-States, Verizon California Inc., The Micronesian Telecommunications Corporation, Verizon Delaware Inc., Verizon Florida Inc., Verizon Maryland Inc., Verizon New England Inc., Verizon New York Inc., Verizon New Jersey Inc., Verizon North Inc., Verizon Northwest Inc., Verizon South Inc., Verizon Pennsylvania Inc., GTE Southwest Inc., Verizon Washington, D.C. Inc., and Verizon West Virginia, Inc. *See* Revised Joint Statement of Stipulated Facts, Disputed Facts, and Key Legal Issues, File No. EB-05-MD-009 (filed Aug. 8, 2005) ("Revised Joint Statement") at 1, n.1.

208 of the Communications Act of 1934, as amended ("Act").[3] OCI's Formal Complaint seeks, *inter alia*, a refund of certain presubscribed interexchange carrier charges ("PICCs") that Verizon billed to OCI from April 1998 to April 2001. OCI did not initiate its claim for refund, however, until July 6, 2004, more than six years after the charges began, and more than three years after the charges ceased. OCI has proffered no valid basis to excuse the delay in initiating its claims. Consequently, OCI's claim is barred by the two-year statute of limitations in section 415 of the Act.[4] To promote fairness and finality, a party seeking from the Commission the serious remedy of a monetary damages award against a particular common carrier must do so in strict accordance with the requirements of the Act and our rules.

II. BACKGROUND

A. The Parties

2. At all relevant times, OCI was a presubscribed 0+ interexchange carrier for payphones owned by the Verizon Telephone Companies.[5] The presubscribed interexchange carrier is selected by either the owner of the payphone or the location provider to provide long distance services for coinless calls made by callers dialing "0" plus the telephone number. OCI provides operator-assisted calling service, primarily from local exchange carrier ("LEC") pay telephones.[6] The Verizon Telephone Companies ("Verizon") are the affiliated incumbent local exchange carriers and wholly owned (directly or indirectly) subsidiaries of Verizon Communications Inc.[7] Verizon serves territories formerly served by Bell Atlantic entities, NYNEX entities, and GTE.[8]

B. The Notice and Comment Proceeding

3. On May 4, 1998, the Commission issued a Public Notice seeking comments regarding whether and to what extent the Commission's rules permitted LECs to bill PICCs for lines serving LEC-owned payphones.[9] The Commission initiated that proceeding (the "Notice-and-Comment Proceeding") in response to several letters -- including a letter dated April 22, 1998 from OCI to the Chief of the

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[3] 47 U.S.C. § 208.

[4] 47 U.S.C. § 415.

[5] *See, e.g.*, Revised Joint Statement at 2, ¶ 2. OCI was formerly known as Oncor. *See* Joint Statement of Stipulated Facts, Disputed Facts, and Key Legal Issues, File No. EB-05-MD-009 (filed July 12, 2005) ("Joint Statement") at Exhibits JS-15, 17, 20, 22.

[6] OCI is no longer a going concern. *See Contel of the South, Inc. d/b/a/Verizon Mid-States v. Operator Communications, Inc.*, Answer and Affirmative Defenses of Operator Communications, Inc., File No. EB-05-MD-007 (filed June 23, 3005) Tab D (Legal Analysis) at 1. Its only "assets" appear to be this claim against Verizon and similar claims that it filed in 2005 against SBC Communications, Inc., Qwest Corporation, and Sprint Corporation, all of whom raise the same limitations defense as does Verizon here. *See OCI v. SBC Communications, Inc.*, Informal Complaint of Operator Communications, Inc., File No. EB-05-MDIC-0017 (filed June 17, 2005); *OCI v. Sprint Corp.*, Informal Complaint of Operator Communications, Inc., File No. EB-05-MDIC-0019 (filed June 17, 2005); *OCI v. Qwest Corp.*, Informal Complaint of Operator Communications, Inc., File No. EB-05-MDIC-0018 (filed June 17, 2005).

[7] *See, e.g.*, Revised Joint Statement at 2, ¶¶ 3-4.

[8] *See, e.g., Contel of the South, Inc. d/b/a/Verizon Mid-States v. Operator Communications, Inc.*, Revised Joint Statement of Stipulated Facts, Disputed Facts, and Key Legal Issues, File No. EB-05-MD-007 (filed Aug. 8, 2005) at 10, ¶¶ 49-50.

[9] Formal Complaint at Exhibit 2 (Commission Seeks Comment on Specific Questions Related to Assessment of Presubscribed Interexchange Carrier Charges on Public Payphone Lines, CCB/CPD No. 98-34 (rel. May 4, 1998)) ("Public Notice").

Common Carrier Bureau[10] -- questioning the lawfulness of such PICCs then being billed by LECs.[11]

4. Later in 1998, Bell Atlantic filed comments and reply comments, and OCI filed comments, in the Notice-and-Comment Proceeding.[12] In 1999, OCI filed in the Notice-and-Comment Proceeding a motion for interim relief -- to which Bell Atlantic filed an Opposition -- and a request to file a supplement to its motion for interim relief.[13] OCI sought in those filings a Commission order directing Bell Atlantic to refrain from taking adverse action against OCI based on OCI's refusal to pay PICCs on payphone lines.[14] The Commission did not rule on OCI's Interim Request and Supplement Request in the Notice-and-Comment Proceeding, which remains open.[15] The last OCI filing in the Notice-and-Comment Proceeding was its Supplement Request, dated August 20, 1999.[16]

5. Between April 1998 and April 2001, in reliance on various tariff provisions, Verizon assessed the PICC on OCI for lines serving Verizon-owned payphones.[17] OCI ultimately paid those charges, protesting to Verizon as it did so.[18]

6. On June 25, 2003, in a proceeding other than the Notice-and-Comment Proceeding, the Commission issued an order addressing the questions raised in the Notice-and-Comment Proceeding.[19] Specifically, the *Payphone PICC Order* "establish[ed] that payphone lines are exempted from the PICC on a going-forward basis .... Therefore, price cap LECs that still assess the PICC on multi-line business lines must adjust their rates in their October 1, 2003 tariff filings to reflect that the PICC no longer applies to payphone lines."[20] The *Payphone PICC Order* went on to state that the Commission "ma[d]e no finding with respect to the application of PICCs prior to the effective date of this Order."[21]

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[10] Formal Complaint at Exhibit 1 (Letter dated Apr. 22, 1998 to Chief, Common Carrier Bureau, from General Counsel, Oncor, Re: Application of Presubscribed Interexchange Carrier (PICC) Charges to Pay Telephones Owned by Local Exchange Carriers) ("April 1998 Letter").

[11] *See* Public Notice at 3.

[12] Formal Complaint at Exhibit 3 (Comments of Oncor Communications, Inc.); Joint Statement at Exhibit JS-18 (Comments of Bell Atlantic), JS-19 (Reply Comments of Bell Atlantic). Other commenters included SBC, US West, Sprint, Southern New England Telephone, One Call Communications, National Operator Services, GTE Service Corporation, Cleartel Communications, BellSouth, MCI, and the American Public Communications Council. *See, e.g.*, Formal Complaint at 6, n.18.

[13] *See* Formal Complaint at Exhibit 4 ("Interim Request"); Joint Statement at Exhibit JS-21; Formal Complaint at Exhibit 7 ("Supplement Request").

[14] Interim Request at 1, 4-5, 10; Supplement Request at 1-2.

[15] *See* Revised Joint Statement at 9, ¶ 68.

[16] *See* Formal Complaint at 32-33, ¶ 73.

[17] *See* Revised Joint Statement at 4-7, ¶¶ 25, 29-53.

[18] *See, e.g., id.* at 4-7, ¶¶ 26-55; 10-12, ¶¶ 75-84.

[19] *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers*, Order on Reconsideration, 18 FCC Rcd 12626 (2003) ("*Payphone PICC Order*").

[20] *Payphone PICC Order*, 18 FCC Rcd at 12629-30, ¶¶ 8-9.

[21] *Id.* at 12629, ¶ 8. The Commission also noted that "[p]rice cap LECs may recover the revenue previously recovered through assessing the PICC on payphone lines by adjusting their multi-line business PICCs." *Id.* at 12629-30, ¶ 9.

C. OCI's Claim for Damages from Verizon

7. On July 6, 2004, pursuant to section 1.716 of our rules,[22] OCI filed an informal complaint against Verizon seeking (i) lost profits and (ii) refunds of the PICCs that Verizon assessed OCI from April 1998 to April 2001.[23] OCI contended that the *Payphone PICC Order*'s exemption of payphone lines from PICCs applies retroactively and renders Verizon's PICCs unlawful under sections 201(b) and 276 of the Act. After Verizon responded by denying OCI's claim,[25] OCI "converted" its informal complaint to a formal complaint pursuant to section 1.718 of our rules.[26]

8. Verizon asserts three defenses to OCI's claim. First, Verizon argues that the two-year statute of limitations in section 415 of the Act bars OCI's claim, because the claim accrued upon OCI's receipt of each PICC bill, and OCI received the last such bill in April 2001, much more than two years before OCI filed the July 6, 2004 informal complaint.[27] Second, in Verizon's view, Verizon's PICCs were lawfully tariffed when assessed on OCI through April 2001, and the Commission's subsequent exemption of payphone lines from PICCs in the 2003 *Payphone PICC Order* applies prospectively only.[28] Third, according to Verizon, Verizon assessed most of the PICCs at issue pursuant to tariffs that were filed on a "streamlined" basis pursuant to section 204(a)(3) of the Act,[29] so most of the charges are "deemed lawful" and cannot form the basis of a damages award.[30]

9. For the following reasons, we hold that the two-year statute of limitations in section 415 of the Act bars OCI's claim in its entirety. Consequently, we dismiss OCI's Formal Complaint without reaching Verizon's other affirmative defenses.

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[22] 47 C.F.R. § 1.716.

[23] Informal Complaint, File No. EB-04-MDIC-0096 (filed July 6, 2004) ("Informal Complaint").

[25] Letter from Kathleen Grillo, Verizon, to Radhika Karmarkar, Enforcement Bureau, File No. EB-04-MDIC-096 (filed Sept. 3, 2004).

[26] 47 C.F.R. § 1.718. *See* Formal Complaint. *See also* Letter from Alexander P. Starr, Enforcement Bureau, to Danny Adams, counsel for OCI, and Karen Zacharia, counsel for Verizon, File No. E05-MD-006 (filed May 23, 2005) (extending until June 3, 2005 OCI's deadline to convert its informal complaint into a formal complaint pursuant to rule 1.718).

[27] *See, e.g.*, The Verizon Telephone Companies' Supplemental Answer to Operator Communications, Inc.'s Complaint, File No. EB-05-MD-009 (filed June 30, 2005) ("Verizon Answer") at 18-22, ¶¶ 52-64; 31-32; Supplemental Legal Analysis in Support of Verizon's Supplemental Answer, File No. EB-05-MD-009 (filed June 30, 2005) ("Verizon Legal Analysis") at 1, 4-10; Verizon's Initial Brief, File No. EB-05-MD-009 (filed Aug. 25, 2005) at 1, 8; Verizon's Reply Brief, File No. EB-05-MD-009 (filed Sept. 9, 2005) at 1-2.

[28] *See* Verizon Answer at 7-9, ¶¶ 18-19, 21-24; 11-12, ¶ 31; 15-16, ¶¶ 42-45; 24, ¶ 71; 26-27, ¶¶ 76-81; 32-33. *See also* Verizon Legal Analysis at 1-3, 9-13; Verizon's Initial Brief at 1; Verizon's Reply Brief at 1.

[29] 47 U.S.C. § 204(a)(3).

[30] *See* Verizon Answer at 27-28, ¶¶ 82-83; 33. *See also* Verizon Legal Analysis at 1, 3, 13-16; Verizon's Initial Brief at 2, 9.

III. DISCUSSION

A. Absent Tolling, the Two-Year Statute of Limitations Bars OCI's Claim.

10. The two-year statute of limitations in section 415 of the Act applies to OCI's claim.[31] That "statute of limitations is a statute of repose, designed to protect a potential defendant against stale and vexatious claims by ending the possibility of litigation after a reasonable period of time has elapsed."[32] Consequently, "[s]ection 415 ... must be applied even if to do so produces hardships."[33]

11. It is well established that a customer's claim challenging the lawfulness of a carrier's charges accrues when the customer receives the carrier's bill containing the allegedly unlawful charges.[34] Applying that rule here, a portion of OCI's damages claim accrued each time OCI received a PICC bill from Verizon from April 1998 to April 2001.[35] Accordingly, under the two-year statute of limitations set forth in section 415 of the Act, portions of OCI's damages claim began to expire in April 2000, and the claim lapsed altogether in April 2003. Consequently, absent some basis for tolling the running of the limitations period, we must dismiss as time-barred OCI's July 2004 claim for PICC refunds.

12. OCI does not dispute the foregoing operation of the statute of limitations. OCI asserts two grounds, however, for tolling the running of the limitations period: (1) general principles of equity and (2) the pendency of the Notice-and-Comment Proceeding. We consider and reject each of those grounds below.

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[31] 47 U.S.C. § 415(b) and (c), providing that all complaints against carriers for the recovery of damages shall be filed with the Commission within two years from the time the cause of action accrues.

[32] *Bunker Ramo Corp. v. The Western Union Telegraph Co., New York, N.T.*, Memorandum Opinion and Order, 31 FCC 2d 449, 453-4, ¶ 12 (Rev. Bd. 1971) ("*Bunker Ramo v. Western Union*"). *See, e.g., Communications Vending Corp. of Arizona, Inc. v. Citizens Communications Co.*, Memorandum Opinion and Order, 17 FCC Rcd 24201, 24222-23, ¶ 50 (2002) ("*EUCL Order*"), *aff'd, Communications Vending Corp. of Arizona, Inc. v. FCC*, 365 F.3d 1064 (D.C. Cir. 2004) ("*Communications Vending v. FCC*"); *US Sprint Communications Co. v. American Telephone & Telegraph Co.*, Memorandum Opinion and Order, 9 FCC Rcd 4801, 4803, ¶ 10 (1994) ("*US Sprint v. AT&T*").

[33] *Michael J. Valenti and Real Estate Market Place of New Jersey T/A Real Estate Alternative v. American Telephone and Telegraph Co.*, Memorandum Opinion and Order, 12 FCC Rcd 2611, 2621-22, ¶ 24 (1997) ("*Valenti v. AT&T*"), *quoting Municipality of Anchorage d/b/a Anchorage Telephone Utility v. Alascom, Inc.*, Memorandum Opinion and Order, 4 FCC Rcd 2472, 2476, ¶ 30 (Com. Car. Bur. 1989) ("*Anchorage v. Alascom*"). *See, e.g., Communications Vending v. FCC*, 365 F.3d at 1075.

[34] *See, e.g., MCI Telecommunications Corp. v. U S West Communications, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 9328, 9329-30, ¶ 5 (2000); *AT&T Corp. v. Bell Atlantic – Pennsylvania*, Memorandum Opinion and Order, 14 FCC Rcd 556, 565, ¶ 19 (1998); *Aetna Life Insurance Co. v. American Telephone and Telegraph Co.*, 3 FCC Rcd 2126, 2128-29, ¶ 12 (1988); *Tele-Valuation, Inc. v. American Telephone and Telegraph Co.*, Memorandum Opinion and Order, 73 FCC 2d 450, 452, ¶ 4 (1979) ("*Tele-Valuation v. AT&T*"); *see also Communications Vending v. FCC*, 365 F.3d at 1073.

[35] We note that OCI's claims accrued at this time notwithstanding the ongoing Notice-and-Comment proceeding, in which the Commission was evaluating the validity of PICC charges such as those at issue here. *See, e.g., Communications Vending Corp.*, 365 F.3d at 1073-74 (rejecting argument that "a cause of action cannot accrue [under section 415 of the Act] when the controlling law does not recognize its validity"), citing *Atchison, Topeka & Santa Fe Ry. Co. v. ICC*, 851 F.2d 1432 (D.C. Cir. 1988) (reversing ICC conclusion that party's cause of action did not accrue until agency resolved relevant legal question). Below, we also conclude that the ongoing proceeding does not form a basis for tolling the two-year limitations period. *See infra* Part III.C.

B. Principles of Equity Do Not Warrant Tolling.

13. OCI argues that principles of equity warrant tolling of the limitations period applicable to its damages claim against Verizon, because (i) OCI had to pay Verizon's PICC bills in order to avoid serious harm to its business; (ii) Verizon knowingly assumed the risk that the Commission would ultimately find the payphone PICCs unlawful; (iii) Verizon's payphone PICCs did not serve to reimburse Verizon for any incurred costs; (iv) the Commission's PICC rules were ambiguous, as applied to payphone lines; (v) OCI actively participated in the Notice-and-Comment Proceeding; (vi) the Commission did not resolve the Notice-and-Comment Proceeding expeditiously; (vii) OCI consistently protested to Verizon regarding the payphone PICCs; and (viii) "OCI had no other [remedial] options.... It was stuck in a notice and comment proceeding."[36] Put differently, according to OCI, it would be unfair to enforce the statute of limitations against OCI, given that doing so would harm OCI more than it would benefit Verizon, and OCI did everything it could and should have done to preserve its claim. We reject OCI's argument, for the following reasons.

14. OCI has not cited any precedent (and we have found none) in which either the Commission or a court has tolled the operation of section 415 on "equitable" grounds like those proffered by OCI here. "The construction of section 415 by the Commission and the federal courts has been strict and exceptions to its application have been confined to narrow circumstances."[37] Indeed, the Commission has identified only one circumstance that warrants equitable tolling of section 415 – fraudulent concealment by the defendant of the facts giving rise to the claim.[38] As the Commission has explained:

> [Where] there is no allegation of fraud or deceit, having been practiced by the defendant upon complainant to prevent him from becoming aware of the facts which are the basis of its claim, *there is no way of . . . tolling the statute of limitations*.[39]

15. Applying that standard here, "there is no way of tolling the statute of limitations." OCI has neither shown nor even alleged that Verizon concealed the fact that Verizon was assessing PICCs on

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[36] Formal Complaint at 29, ¶ 67. *See, e.g.*, Formal Complaint at 4-9, ¶¶ 8-9, 18-19; 12-17, ¶¶ 28, 30-36, 38-39; 19, ¶¶ 45-47; 29-34, ¶¶ 65-75. *See also* Initial Brief of Operator Communications, Inc., File No. EB-05-MD-009 (filed Aug. 25, 2005) ("OCI Brief") at 14-15; Letter from Danny E. Adams, counsel for OCI, to Marlene H. Dortch, Secretary, FCC, File No. EB-05-MD-009 (filed Sept. 9, 2005, in lieu of a reply brief).

[37] *Anchorage v. Alascom*, 4 FCC Rcd at 2475, ¶ 23. *See, e.g., Communications Vending v. FCC*, 365 F.3d at 1075 ("The Commission has construed [section 415] strictly. . . We too have set a high hurdle for equitable tolling, allowing a statute to be tolled 'only in extraordinary and carefully circumscribed instances.'"); *Valenti v. AT&T*, 12 FCC Rcd at 2621-22, ¶ 24, *quoting Armstrong Utilities, Inc. v. General Telephone Co. of Pennsylvania*, 25 FCC 2d 385, 389, ¶ 11 (1971) ("*Armstrong Utilities v. General Telephone*") ("The construction of Section 415, both by the Commission and the federal courts, has been 'strict'....").

[38] *EUCL Order*, 17 FCC Rcd at 24222, n.145; *Valenti v. AT&T*, 12 FCC Rcd at 2621-22, ¶ 24; *US Sprint v. AT&T*, 9 FCC Rcd at 4802, ¶ 10; *Anchorage v. Alascom*, 4 FCC Rcd at 2475, ¶ 23; *Tele-Valuation v. AT&T*, 73 FCC2d at 452-3, ¶ 4 and n.7; *U.S. Cablevision v. New York Telephone Co.*, Memorandum Opinion and Order, 46 FCC 2d 704, 706-7, ¶ 5 (1974) ("*Cablevision v. New York Tel*"); *Bunker Ramo v. Western Union*, 31 FCC 2d at 453-4, ¶ 12; *Armstrong Utilities v. General Telephone*, 25 FCC 2d at 390, ¶ 15.

[39] *Valenti v. AT&T*, 12 FCC Rcd at 2621-22, ¶ 24, *quoting Armstrong Utilities v. General Telephone*, 25 FCC 2d at 390, ¶ 15 (emphasis added). Although the Commission has implied that that there might be some additional basis for equitable tolling, *see, e.g., Bunker Ramo v. Western Union*, 31 FCC 2d at 453-4, ¶ 12, the Commission has never identified or relied upon any basis other than fraudulent concealment. In the *EUCL Order*, the Commission simply assumed, without deciding, that "due diligence" by the plaintiff might warrant tolling, and then demonstrated the absence of such diligence. *See EUCL Order*, 17 FCC Rcd at 24225-26, ¶¶ 57-59.

OCI's payphone lines.[40] In fact, Verizon expressly suggested over five years ago that OCI should file a complaint if it sought to recover such PICCs.[41]

16. In a short footnote in its final substantive submission -- which concerns an entirely different issue -- OCI suggests for the first time that Verizon committed fraud by twice telling OCI that Verizon would refund paid PICCs if the Commission were to rule that payphone PICCs are unlawful.[42] OCI's suggestion is not only late,[43] but also erroneous. One Verizon statement was nothing more than a recognition by Bell Atlantic that OCI's agreement to pay disputed charges was not a concession by OCI of the charges' validity; no reference to refunds was made.[44] The other Verizon statement was one made merely by a GTE billing specialist that "appropriate" credits would be provided if the Commission were to rule in OCI's favor.[45] However, OCI could not have reasonably believed that "appropriate" credits would include those sought more than two years after the disputed charges were imposed, especially given that, several months *after* this statement by a GTE billing specialist, attorneys for GTE's imminent purchaser (Bell Atlantic) expressly notified OCI of the need to file a complaint.[46] Indeed, OCI has presented no argument or evidence that it refrained from filing a complaint in reliance on either of these statements. Thus, OCI has fallen short of meeting the high evidentiary burden of showing fraud.[47] Consequently, we reject OCI's contention that we should equitably toll the operation of section 415 in this case.

17. In addition, even assuming, *arguendo*, that we could equitably toll the operation of section 415 on some basis other than fraudulent concealment, OCI's proffered bases are not compelling. First, as fully explained *infra*,[48] OCI's contention that it had no choice but to await the outcome of the Notice-and-Comment Proceeding before filing a complaint for damages against Verizon is unfounded. As Verizon itself pointed out to OCI in 1999, at all relevant times OCI could have filed a complaint for damages against Verizon if OCI had an interest in pursuing that remedy.[49] Second, even within the

[40] *See, e.g., Cablevision v. New York Tel*, 46 FCC 2d at 706-7, ¶ 5 ("we cannot hold that the statute of limitations was tolled in view of complainant's failure to allege any facts whatsoever indicating that fraud or deceit was practiced by NYTelco upon complainant to prevent complainant from becoming aware of the basic facts upon which its claim for reimbursement is based"); *Anchorage v. Alascom*, 4 FCC Rcd at 2476, ¶ 30 (denying request for equitable estoppel of section 415, because the complainant "has convincingly shown neither that Alascom fraudulently concealed facts that were relevant and material to the alleged violations of the Act nor that Alascom misrepresented, either intentionally or unintentionally, any such facts. . . .").

[41] Specifically, in one of its filings in the Notice-and-Comment Proceeding, Verizon stated: "[I]f [OCI] truly believes the [PICC] charge is unlawful, it may file a complaint." Joint Statement Exhibit JS-21 (Bell Atlantic Opposition to Oncor Motion for Interim Relief, dated June 25, 1999) at 1.

[42] OCI Brief at 14-15, n.6.

[43] For example, 47 C.F.R. §§ 1.720(b)-(d) and 1.721(a)(5)-(6) required OCI to set forth in its Formal Complaint *all the facts and legal analyses* upon which the claims are based.

[44] *See* Formal Complaint Exhibit 10, Attachment C, at 1.

[45] *See* Formal Complaint Exhibit 10, Attachment D, at 2.

[46] *See* Joint Statement Exhibit JS-21 at 1.

[47] *See generally Cablevision v. New York Tel*, 46 FCC 2d at 706-7, ¶ 5; *Anchorage v. Alascom*, 4 FCC Rcd at 2476, ¶ 30.

[48] *See* Part III(C), *infra*.

[49] *See* Joint Statement Exhibit JS-21 at 1. Indeed, US West made the same point to OCI in one of Qwest's filings in the Notice-and-Comment Proceeding, stating that "Sections 206-209 of the Communications Act provide a mechanism whereby Oncor can challenge any action which it believes contravenes the provisions of the Act." Opposition of US West Communications, Inc. at 8, CCB/CPD No. 98-34 (filed Dec. 14, 1999).

context of the Notice-and-Comment Proceeding, OCI did not diligently pursue the remedy it seeks here: OCI's submissions never mentioned a request for refunds or lost profits;[50] and OCI submitted its last pleading in that Proceeding in 1999,[51] and then remained silent for almost four years before the Commission answered the payphone PICC questions raised in that Proceeding. Third, even after the Commission answered the payphone PICC questions raised in that Proceeding,[52] OCI waited another year before filing its informal complaint for damages against Verizon.[53]

18. Finally, OCI's assertion that applying the statute of limitations would unfairly allow a large company like Verizon to retain ill-gotten gains at the expense of a small company like OCI similarly provides no basis for tolling section 415. As the Commission has frequently stated, "the fact that application of section 415 of the Act may result in hardship in some instances does not mean Congress intended that the statute be tolled or that a defendant may be estopped from reliance thereon."[54] Indeed, statutes of limitations inherently involve the potential for denying otherwise valid claims. In recently affirming the Commission's holding that section 415 barred certain damages claims brought by relatively small independent payphone providers ("IPPs") against relatively large local exchange carriers ("LECs") (including Verizon), the D.C. Circuit observed:

> While it is certainly true that the Commission's decision [not to equitably toll section 415] allows the LECs to keep money that ... they collected unlawfully, that is both the nature of a statute of limitations and the consequence of the IPPs' failure to file and pursue their complaints in a timely manner.[55]

That observation is particularly apt in this proceeding, because here, unlike in the D.C. Circuit case, Verizon asserts several defenses that the Commission has not decided; consequently, here, unlike in the D.C. Circuit case, it is not clear that Verizon collected the charges unlawfully.

19. In sum, we reject OCI's contention that we should equitably toll the running of the limitations period under section 415. OCI has shown neither fraudulent concealment by Verizon nor any other basis to warrant such tolling.

C. The Pendency of the Notice-and-Comment Proceeding Does Not Warrant Tolling.

20. OCI also contends that the pendency of the Notice-and-Comment Proceeding tolls the running of the limitations period for OCI's damages claim against Verizon. In OCI's view, once the Commission chose to examine the lawfulness of payphone PICCs in the context of the Notice-and-Comment Proceeding, OCI allegedly had no choice but to await that Proceeding's outcome before filing its damages claim.[56] According to OCI:

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[50] *See* Formal Complaint Exhibits 1, 3, 4, 7.

[51] *See, e.g.*, Formal Complaint at 32-33, ¶ 73.

[52] *See Payphone PICC Order.*

[53] *See* Informal Complaint.

[54] *Anchorage v. Alascom*, 4 FCC Rcd at 2476-7, ¶ 32. *See, e.g., Valenti v. AT&T*, 12 FCC Rcd at 2621-22, ¶ 24; *Communications Vending v. FCC*, 365 F.3d at 1075.

[55] *Communications Vending v. FCC*, 365 F.3d at 1076 (internal quotation marks and citations omitted).

[56] *See, e.g.*, Formal Complaint at 16, ¶ 38; 23-28, ¶¶ 54-64. *See also* Reply of Operator Communications, Inc., File No. EB-05-MD-009 (filed June 30, 2005) ("OCI Reply") Legal Analysis at 23-26.

> [C]arriers did not have the same options they have today for filing complaints against other carriers. OCI's only option – particularly since the Commission already initiated a proceeding addressing the matter – was to submit pleadings, comments, motions, and form orders in the [Notice-and-Comment Proceeding] .... [A]ny other initiative at the Commission would be duplicative.[57]

21. OCI's fundamental premise is incorrect. It simply is not true that an aggrieved party could not file an adjudicatory complaint for damages against a particular defendant while a general, notice-and-comment proceeding involving similar issues was pending.[58] No Commission rule or order creates such a bar, and OCI cites to none. Recognizing this, Verizon pointed out to OCI the need to file a complaint in 1999,[59] as did Qwest,[60] which OCI failed to do. Indeed, the Commission's rules contemplate the possibility of simultaneous complaint and non-complaint proceedings. Rule 1.721(a)(9) requires a plaintiff to indicate "whether the complaint seeks prospective relief identical to the relief proposed or at issue in a notice-and-comment proceeding that is concurrently before the Commission. . . ."[61] Thus, the fact that the Notice-and-Comment Proceeding was pending did not bar OCI from filing, at a minimum, an informal complaint to preserve its rights and did not toll the limitations period applicable to OCI's adjudicatory damages claim against Verizon.[62] Indeed, under closely analogous circumstances, the D.C. Circuit recently confirmed that the filing of a petition for declaratory ruling by a trade association does not toll the statute of limitations for damages complaints by individual payphone providers addressing the

[57] Formal Complaint at 16, ¶ 38.

[58] OCI's repeated reference to 47 U.S.C. § 207 is mystifying. *See e.g.*, Formal Complaint at 15, n.52; 26-7, ¶¶ 60, 62; OCI Reply at 25-26. Section 207 requires parties seeking recovery of damages to file a complaint either with the Commission *or* in federal court, but not both. This provision, however, has nothing to do with filing a complaint with the Commission while a notice-and-comment proceeding is pending at the Commission. Moreover, OCI's unsupported suggestion that the complaint procedures somehow did not exist during the April 1998-April 2001 timeframe (*see, e.g.*, Formal Complaint at 16, ¶ 38) is similarly inexplicable. Rules governing the filing of both informal and formal complaints were in place at the time and virtually identical to those existing today. *See Amendment of Rules Governing Procedures to Be Followed When Formal Complaints Are Filed Against Common Carriers*, Report and Order, 12 FCC Rcd 22497 (1997) (subsequent history omitted). *See also Amendment of Rules Governing Procedures to be Followed When Formal Complaints are Filed Against Common Carriers*, Report and Order, 8 FCC Rcd 2614 (1993); *Amendment of Rules Governing Procedures to be Followed Where Formal Complaints are Filed Against Common Carriers*, Report and Order, 3 FCC Rcd 1806 (1988).

[59] Joint Statement Exhibit JS-21 at 1.

[60] Opposition of US West Communications, Inc. at 8, CCB/CPD No. 98-34 (filed Dec. 14, 1999); *see* n.42, *supra.*

[61] 47 C.F.R. § 1.721(a)(9).

[62] OCI warns that, if parties can file complaints while related proceedings are pending elsewhere at the Commission, a flood of complaints will be filed whenever an unresolved issue of broad industry concern arises. *See* Formal Complaint at 28, ¶ 64. As stated above, however, our holding here is nothing new; aggrieved parties have always had the option to file complaints under those circumstances, and the Commission has managed its workload accordingly. Moreover, the Commission's informal complaint process provides parties a specific but streamlined option for preserving damages claims while related issues of broad industry concern are addressed in other proceedings. 47 C.F.R. §§ 1.716-1.718. *See e.g., AT&T Corp. v. Virgin Islands Telephone Corp. d/b/a Innovative Telephone*, Order, File No. EB-01-MDIC-0552 (rel. Nov. 21, 2004) (extending time for defendant to respond to the informal complaint until 90 days after the D.C. Circuit ruled on a different case involving substantially similar issues). Indeed, under OCI's theory, any notice and comment proceeding would serve to toll the statute of limitation for any participating party for any claim for damages relating to the subject of the administrative proceeding. Such an outcome would eviscerate section 415.

same underlying conduct.[63]

22. OCI analogizes the situation here to situations in which courts, invoking the administrative exhaustion doctrine, toll the limitations period for filing a court claim while a party pursues all available administrative remedies.[64] That analogy does not bear out. The administrative exhaustion doctrine addresses the adjudicatory functions of, and the relationships between, agencies and courts and does not apply in this wholly intra-agency context. The question here concerns the complaint and non-complaint functions within the Commission itself, not the complaint functions of the Commission and courts; and, as previously stated, there is no Commission rule or order requiring "exhaustion" of general notice-and-comment procedures before a particular plaintiff may file an adjudicative complaint for damages against a specific defendant.[65]

23. Almost as an aside, OCI cursorily suggests in its Formal Complaint that its submissions in the Notice-and-Comment Proceeding constitute an informal complaint for damages under Commission rules and thereby tolled the running of the limitations period of section 415.[66] We reject that suggestion. An "informal complaint" filed pursuant to sections 1.716 – 1.718 of the Commission's rules constitutes a "complaint" within the meaning of section 415 of the Act and thus tolls the running of the limitations period.[67] Although the Commission's rules regarding the content of informal complaints are not extensive, they do require the complainant to put a defendant and the Commission on fair notice that the complainant is seeking (i) the initiation of the Commission's section 208 complaint procedures (ii) regarding a particular defendant and (iii) a specific remedy that may later be sought in a formal complaint.[68]

24. OCI's submissions in the Notice-and-Comment Proceeding did none of those things. OCI's April 1998 Letter and subsequent Comments were not styled as complaints, did not reference the complaint provisions of the Act or the Commission's rules, did not name any Verizon entity as a particular target of their actions, and did not request the specific remedy of monetary damages against a particular defendant, which remedy "can only be obtained from the Commission within the parameters established by Sections 206-209 of the Act and Sections 1.711 through 1.735 of the Commission's

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[63] *See Communications Vending v. FCC*, 365 F.3d at 1076 ("that petition sought only a declaratory ruling that the LECs' imposition of EUCL charges was unlawful, so it could neither have tolled the statute nor otherwise excused the [independent payphone providers'] failure to pursue complaints for damages").

[64] *See, e.g.*, Formal Complaint at 25-27, ¶¶ 59, 61, 63; OCI Reply, Legal Analysis at 25-26.

[65] In any event, as OCI acknowledges, the administrative exhaustion doctrine applies only when the second action seeks the same remedy as the first action. That prerequisite is not met here. The first action – the Notice-and-Comment Proceeding – involved declaratory and injunctive relief; the second action – this complaint proceeding – involves retrospective monetary damages (*i.e.*, refunds and lost profits). Therefore, even on its own terms, the administrative exhaustion doctrine does not warrant tolling of the limitations period applicable to OCI's complaint for damages against Verizon.

[66] *See* Formal Complaint at 5, ¶ 11; 22-23, ¶¶ 52 and n.73, 54. *See also* OCI Reply at 3, ¶ 10; 7-8, ¶¶ 35-36; 15-16; OCI Reply, Legal Analysis at 22-25; OCI Brief at 12-14. OCI's Formal Complaint focuses almost exclusively on the two other alleged bases for tolling already addressed above: so-called "administrative" tolling (Formal Complaint at 23-28, ¶¶ 54-64) and equitable tolling (Formal Complaint at 28-34, ¶¶ 65-75). Nevertheless, for the sake of completeness, we reach and reject OCI's suggestion.

[67] 47 C.F.R. §§ 1.716-1.718.

[68] *See, e.g., MCI Telecommunications Corp., v. Pacific Telephone Co.*, Memorandum Opinion and Order, 12 FCC Rcd 13243, 13253-54, ¶¶ 17-18 (Com. Car. Bur. 1997) ("*MCI v. Pac Tel*"); 47 C.F.R. §§ 1.716-1.718.

rules."[69] The same is true of OCI's Interim and Supplement Requests (except that those did pertain to Verizon).[70]

25. Because OCI's submissions lacked the fundamental traits of an informal complaint, the Commission plainly and correctly did not handle OCI's submissions as an informal complaint under the Commission's rules. OCI never asked the Commission to treat its submissions as an informal complaint, and never notified the Commission that it believed its submissions constituted an informal complaint that could ultimately entitle it to monetary damages in a formal complaint proceeding against Verizon. Further, Verizon plainly did not view OCI's submissions as a complaint, because Verizon suggested in response to these filings that OCI ought to *file* a complaint.[71] Even after this explicit invitation, OCI did not respond by saying its submissions already constituted an informal complaint or separately file a complaint. Given these circumstances, we find that OCI's submissions in the Notice-and-Comment Proceeding do not constitute an informal complaint that tolled the operation of section 415.[72]

26. The rulings in *MCI v. PacTel* and *Communications Vending v. FCC* support these conclusions. Both of those cases soundly reject belated attempts to re-characterize as complaints submissions closely akin to those of OCI here, *i.e.*, letters that neither referenced any complaint provisions nor sought damages from a particular defendant.[73] Accordingly, OCI's submissions in the Notice-and-Comment Proceeding did not toll the running of the limitations period set forth in section 415 of the Act.

27. Even if we were to disregard reason and precedent to treat OCI's submissions in the Notice-and-Comment Proceeding as an informal complaint, section 415 would still time-bar OCI's Formal Complaint for two reasons. First, if we were to liberally construe OCI's submissions in the Notice-and-Comment Proceeding as an informal complaint, then we would also have to liberally construe Verizon's submissions in the Notice-and-Comment Proceeding as a "response" to OCI's informal

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[69] *See, e.g., MCI v. Pac Tel*, 12 FCC Rcd at 13,253, ¶ 17. *See* April 1998 Letter; Formal Complaint Exhibit 3 (Comments of Oncor Communications, Inc.).

[70] *See* Interim Request; Supplement Request. One submission contains a single footnote citation to 47 C.F.R. § 1.727. *See* Supplement Request at 2.

[71] *See* Joint Statement Exhibit JS-21.

[72] We recognize that, when a letter is submitted to the Commission by *pro se* "consumers who have little, if any, familiarity with Commission's rules or practices," the Commission may construe the rules more liberally. *MCI v. Pac Tel*, 12 FCC Rcd at 13253, n.67. However, such an approach has no application where, as here, the submissions are by in-house and outside counsel for a communications company, all with extensive experience with Commission processes.

[73] *See MCI v. PacTel*, 12 FCC Rcd at 13252-54, ¶¶ 16-18; *Communications Vending v. FCC*, 350 F.3d at 1076. What was said in *MCI v. PacTel* is equally apt here: "MCI could have, at any time after the February 1990 and September 1990 [letters to the Bureau Chief], filed claims for damages with the Commission based on the allegations in those letters if those were its intentions. At the very least, MCI could have acted to put the Bureau, and the defendant LECs, on notice that it viewed the February 1990 and September 1990 Evans letters as informal complaints that might entitle MCI to monetary damages to the extent the alleged violations were ultimately proven. Under these circumstances, it would be contrary to the policies underlying the statute of limitations to permit MCI, years after the fact, to transform the September 1990 [letter to the Bureau Chief] into an informal complaint for purposes of pursuing monetary damages claims against the defendant LECs that could have been filed with the Commission within two years from the time MCI was assessed the charges that form the basis of such claims. . . . Were MCI's characterization of the September 1990 [letter to the Bureau Chief] correct, the Commission would have to treat virtually every letter or written correspondence to any Commission office that raised a question regarding a practice of a common carrier as a claim for damages in applying Section 415 of the Act. Such a result would be inconsistent with Section 415." 12 FCC Rcd at 13254, ¶ 18 and n.70.

complaint, in which case OCI would have had six months from Verizon's response (or until 2000) to file a formal complaint that would "relate-back" to the filing date of OCI's informal complaint.[74] OCI missed that deadline by several years. Second, 47 C.F.R. § 1.716 requires an informal complaint to state "the specific relief or satisfaction sought," and the filing date of a formal complaint relates back to the prior filing date of the informal complaint only if, *inter alia*, the formal complaint "is based on the same cause of action as the informal complaint."[75] Because OCI's submissions in the Notice-and-Comment Proceeding did not seek the specific relief that OCI seeks in this formal complaint proceeding (*i.e.*, retrospective money damages), OCI's formal complaint filed in 2005 is not based on the same cause of action as OCI's Notice-and-Comment submission and thus does not relate back to OCI's 1998-1999 "informal complaint."[76]

IV. CONCLUSION

28. OCI's claim against Verizon for monetary damages accrued no later than April 2001. The applicable statute of limitations is two years. Therefore, absent some basis for tolling of the running of the two-year limitations period, OCI's claim expired in April 2003, well before OCI filed this formal complaint. All of the bases proffered by OCI for such tolling lack merit. Therefore, the statute of limitations bars OCI's formal complaint.

V. ORDERING CLAUSE

29. ACCORDINGLY, IT IS HEREBY ORDERED that, pursuant to sections 1, 4(i), 4(j), 208, and 415 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 208, and 415, the formal complaint filed by Operator Communications, Inc. is DISMISSED WITH PREJUDICE.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[74] *See* 47 C.F.R. § 1.718.

[75] 47 C.F.R. § 1.718.

[76] *See generally MCI v. PacTel*, 12 FCC Rcd at 13255, n.74 (noting the possibility that a formal complaint seeking monetary damages may not relate back to an informal complaint not seeking monetary damages).

EXHIBIT 49

FCC Form 499-A, January2017
Approved by OMB
OMB Control Number 3060-0855
Estimated Average Burden Hours Per Response: 13.5 Hours

2017 Telecommunications Reporting Worksheet Instructions (FCC Form 499-A)

Table of Contents

File the FCC Form 499-A online at http://forms.universalservice.org

I. INTRODUCTION

The Communications Act of 1934, as amended, requires that the Commission establish mechanisms to fund universal service (USF), interstate telecommunications relay services (TRS), the administration of the North American Numbering Plan (NANPA), and the shared costs of local number portability administration (LNPA).[1] To accomplish these congressionally directed objectives, the Commission requires telecommunications carriers and certain other providers of telecommunications (including Voice-over-Internet-Protocol (VoIP) service providers) to report each year on the Telecommunications Reporting Worksheet the revenues they receive from offering service.[2] The administrators of each of these programs use the revenues reported on this Worksheet to calculate and assess any necessary contributions. The Commission also uses the revenue data reported on this Worksheet to calculate and assess Interstate Telecommunications Service Provider (ITSP) regulatory fees.[3]

Although some Telecommunications Reporting Worksheet filers may not need to contribute to each of the support and cost recovery mechanisms, all telecommunications carriers and certain additional

[1] 47 U.S.C. §§ 151, 225, 251, 254, 616.

[2] *See* 47 CFR §§ 52.17(b), 52.32(b), 54.708, 54.711, 64.604(c)(5)(iii)(A) and (B).

[3] *See* 47 U.S.C. § 159(a), (b)(1)(A), (g) (authorizing the Commission to collect annual regulatory fees to recover the costs of enforcement, policy and rulemaking, user information, and international activities).

telecommunications providers must file. These instructions explain which filers must contribute to particular mechanisms, but filers should consult the specific rules that govern contributions for each of the mechanisms.[4] In general, contributions are calculated based on each filer's end-user telecommunications revenue information, as filed in this Worksheet.

By filing this Worksheet, filers may also satisfy their obligations under section 413 of the Act to designate an agent in the District of Columbia for service of process[5] and their obligations to register with the Federal Communications Commission.[6]

II. CONTACT INFORMATION

If you have questions about the Worksheet or the instructions, you may contact:

Universal Service Administrator	form499@usac.org (888) 641-8722

If you have questions regarding contribution amounts, billing procedures, or the support and cost recovery mechanisms, you may contact:

Universal Service Administrator	form499@usac.org (888) 641-8722
TRS Administrator	trs@rolkaloube.com (717) 585-6605
NANPA Billing and Collection Agent	nanp@welchllp.com (613) 760-4512
Local Number Portability Administrators	billing@neustar.biz (877) 245-5277
ITSP Regulatory Fees	(877) 480-3201

[4] *See* 47 CFR §§ 52.17 (numbering administration), 52.32 (local number portability), 54.706 (universal service), 64.604 (interstate TRS).

[5] 47 U.S.C. § 413; *see* 47 CFR § 1.47(h).

[6] 47 CFR § 64.1195.

III. FILING REQUIREMENTS AND GENERAL INSTRUCTIONS

A. WHO MUST FILE

1. GENERAL INFORMATION

With very limited exceptions, all intrastate, interstate, and international providers of telecommunications in the United States[7] must file this Worksheet.[8] In addition to filing this form most filers must contribute to the universal service, TRS, NANPA, and LNPA funding mechanisms. This section provides a short summary to assist carriers and service providers in determining whether they must contribute to one or more of the mechanisms. Filers should consult the Commission's rules and orders to determine whether they must contribute to one or more of the mechanisms.

FCC Form 499-A is a multi-purpose form. It is used for at least seven purposes:

Annual filing requirements:

1. Report revenues for purposes of the federal Universal Service Fund (USF);
2. Report revenues for purposes of the federal Telecommunications Relay Services Fund (TRS);
3. Report revenues for the administration of the North American Numbering Plan (NANPA);
4. Report revenues for the shared costs of local number portability administration (LNPA);
5. Report revenues for calculating and assessing Interstate Telecommunications Service Provider (ITSP) regulatory fees;

One-time filing requirements (with obligation to revise if information changes):

6. Satisfy obligations under section 413 of the Act to designate an agent in the District of Columbia for service of process;
7. Fulfill obligations to register with the Federal Communications Commission under 47 CFR § 64.1195.

If you are subject to one or more of the above requirements, you must file FCC Form 499-A.

1. Federal Universal Service Fund — Entities that provide interstate telecommunications to the public for a fee as well as certain other providers of interstate telecommunications must contribute to the universal service support mechanisms. *See* 47 CFR § 54.706.

[7] For this purpose, the United States is defined as the contiguous United States, Alaska, Hawaii, American Samoa, Baker Island, Guam, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Island, Navassa Island, the Northern Mariana Islands, Palmyra, Puerto Rico, the U.S. Virgin Islands, and Wake Island.

[8] Section 254(d) applies not only to "every telecommunications carrier that provides interstate telecommunications *services*" but also to certain "other provider[s] of interstate telecommunications." 47 U.S.C. § 254(d) (emphasis added). For more information on these terms, see: 47 U.S.C. §§ 153(50), (51); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (1997) (*Universal Service First Report and Order*); *Universal Service Contribution Methodology et al.*, WC Docket No. 06-122 *et al.*, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518 (2006) (*2006 Contribution Methodology Reform Order*).

2. Telecommunications Relay Services — Every common carrier[9] providing interstate telecommunications services and every VoIP provider (including interconnected and non-interconnected) must contribute to the TRS Fund. *See* 47 CFR §§ 64.601(b), 64.604.

3. Non-Interconnected VoIP Service Providers — All providers of "non-interconnected VoIP service" (as defined in section 64.601(a) of the Commission's rules) with interstate end-user revenues subject to TRS contributions must file this Worksheet in order to register with the Commission and report their revenues for purposes of calculating TRS contributions.[10]

4. North American Numbering Plan Administration — All telecommunications carriers and interconnected VoIP providers in the United States shall contribute to meet the costs of establishing numbering administration. *See* 47 CFR § 52.17.

5. Shared Costs of Local Number Portability — The shared costs of long-term number portability attributable to a regional database shall be recovered from all telecommunications carriers and interconnected VoIP providers providing service in that region. *See* 47 CFR § 52.32.

6. ITSP Regulatory Fees – Congress requires the Commission to assess and collect regulatory fees "to recover the costs of …enforcement activities, policy and rulemaking activities, user information services, and international activities." *See* 47 CFR § 159(a).

7. Designation of Agent for Service of Process – For more information on this requirement, see the instructions for Block 2-B.

8. FCC Registration – For more information on this requirement, see the instructions for Block 2-C.

2. ADDITIONAL INFORMATION REGARDING USF CONTRIBUTION REQUIREMENTS

Entities that provide interstate telecommunications to the public for a fee as well as certain other providers of interstate telecommunications must contribute to the universal service support mechanisms.

- The term "telecommunications" refers to the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.[11]

- For the purpose of filing, the term "interstate telecommunications" includes, but is not limited to, the following types of services: wireless telephony, including cellular and personal communications services (PCS); paging and messaging services; dispatch and operator services; mobile radio services;[12] access to interexchange service; business data services; wide area

[9] "Common carrier" or "carrier" means "any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or interstate or foreign radio transmission of energy. . ." 47 U.S.C. § 153(11).

[10] *See Contributions to the Telecommunications Relay Services Fund*, CG Docket No. 11-47, Report and Order, 26 FCC Rcd 14532, 14537, para. 12 (2011) (*2011 TRS Contributions Order*) (adding definition of "non-interconnected VoIP service" to the Commission's TRS rules at section 64.601(a)). *See* 47 C.F.R § 64.601(a).

[11] 47 U.S.C. § 153(50).

[12] *See Request for Review by Waterway Communication System, LLC and Mobex Network Services, LLC of a Decision of the Universal Service Administrator*, WC Docket No. 06-122, Order, 23 FCC Rcd 12836 (Wireline Comp. Bur. 2008).

telecommunications services (WATS); subscriber toll-free and 900 services; message telephone services (MTS); private line; telex; telegraph; video services; satellite services; resale services; Frame Relay services; asynchronous transfer mode (ATM) services; Multi-Protocol Label Switching (MPLS) services; audio bridging services;[13] and interconnected VoIP services.

- Note that all incumbent (ILEC) and competitive (CLEC) local exchange carriers provide access services and, therefore, provide interstate telecommunications. No filing exemptions exist for data or non-voice services.
- There is no filing exception for entities that offer services to a narrow or limited class of users. Thus filers include:
    - Entities that provide interstate telecommunications to entities other than themselves for a fee on a private, contractual basis.
    - Most telecommunications carriers and all interconnected VoIP providers including those that qualify for the *de minimis* exception under the Commission's universal service rules.[14]
    - Owners of pay telephones, also known as "pay telephone aggregators."
- Three types of non-common-carrier telecommunications providers may, under the circumstances set forth below, not be required to contribute to USF: (1) *de minimis* telecommunications providers; (2) government, broadcasters, schools, and libraries; and (3) systems integrators and self-providers.

a. Exception for USF *de minimis* telecommunications providers

Telecommunications providers are not required to contribute to the universal service support mechanisms for a given year if their contribution for that year is less than $10,000.[15]

- Providers that offer telecommunications for a fee exclusively on a non-common carrier basis need not file this Worksheet if their contribution to the universal service support mechanisms would be *de minimis* under the universal service rules. Note that entities providing solely private line service may nevertheless be considered common carriers if they offer their services directly to the public or to such classes of users as to be effectively available directly to the public.[16]
- Telecommunications carriers providing telecommunications services on a common-carriage basis and interconnected VoIP providers need not contribute to the universal service support mechanism if they meet the *de minimis* standard. However, they must file this Worksheet because they must contribute to other support mechanisms (TRS, NANPA or LNPA). *See* section III.A.1 for information regarding contribution requirements for TRS, NANPA, and LNPA. Such providers need not file an FCC Form 499-Q.[17]

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[13] *See Request for Review by InterCall, Inc. of Decision of Universal Service Administrator*, CC Docket No. 96-45, Order, 23 FCC Rcd 10731, 10737–38, para. 22 (2008) (*Intercall Order*), *petition for reconsideration denied*, *Petitions for Reconsideration and Clarification of the InterCall Order*, WC Docket No. 06-122, CC Docket No. 96-45, Order on Reconsideration, 27 FCC Rcd 898 (2012), *subsequent history omitted*.

[14] *See* 47 CFR § 54.708.

[15] *See id*.

[16] *See* 47 U.S.C. § 153(53).

[17] Sections 54.706, 54.711, and 54.713 of the Commission's rules require all telecommunications carriers providing interstate telecommunications services, interconnected VoIP providers that provide interstate telecommunications,

(continued . . .)

Providers who may be *de minimis* should complete the table contained in Appendix A to determine whether they meet the *de minimis* standard.

- To complete this table, providers must first complete Block 4 of the Worksheet and enter the amounts from Lines 423(d) and 423(e).
- Providers whose estimated contributions to universal service support mechanisms would be less than $10,000 are considered *de minimis* for universal service contribution purposes and will not be required to contribute directly to universal service support mechanisms.
- Use this table to calculate estimated universal service contributions for the period January 2016 through December 2016.

b. Exception for government, broadcasters, schools, and libraries

The following non-common-carrier entities are explicitly exempted from contributing directly to the universal service support mechanisms and need not file this Worksheet unless they contribute to TRS, LNP, or NANPA:[18]

- Government entities that purchase telecommunications services in bulk on behalf of themselves, such as state networks for schools and libraries.
- Public safety and local governmental entities licensed under Subpart B of Part 90 of the Commission's rules or any entity providing interstate telecommunications exclusively to public safety or government entities that do not offer services to others.
- Broadcasters, non-profit schools, non-profit libraries, non-profit colleges, non-profit universities, and non-profit health care providers.

c. Exception for systems integrators and self-providers

Systems integrators: Systems integrators that derive less than five percent of their systems integration revenues from the resale of telecommunications are not required to file or contribute directly to universal service. Systems integrators provide integrated packages of services and products that may include, but are not limited to computer capabilities, interstate telecommunications, remote data processing services, back-office data processing, management of customer relationships with underlying carriers and vendors, provision and maintenance of telecommunications and computer equipment, and help desk functions.[19]

(Continued from previous page)
providers of interstate telecommunications that offer interstate telecommunications for a fee on a non-common carrier basis, and payphone providers that are aggregators to contribute to the universal service fund and file a FCC Form 499-Q on February 1, May 1, August 1, and November 1 each year. 47 CFR §§ 54.706, 54.711, 54.713. The FCC Form 499-Q sets forth information that the contributor must submit, so that the Administrator of the universal service support mechanisms may calculate and assess contributions. *See* Telecommunications Reporting Worksheet, FCC Form 499-Q (2016) Instructions for Completing the Quarterly Worksheet for Filing Contributions to Universal Service Support Mechanisms, OMB Control Number 3060-0855 (dated Dec. 2014).

[18] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9187, para. 800 (1997) (*Universal Service First Report and Order*).

[19] *See Federal-State Joint Board on Universal Service; Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, Fourth Order on Reconsideration, 13 FCC Rcd 5318, 5471-75 (1997).

Self-Providers: Entities that provide telecommunications only to themselves or to commonly-owned affiliates need not file.[20]

d. Filing Exemption for Marketing Agents

Marketing agents, i.e., entities that market services on behalf of a telecommunications provider, are not telecommunications providers and are not required to file this Worksheet. The amounts remitted to or retained by the marketing agent are treated as expenses of the underlying provider and may not be deducted from the provider's revenues. A telecommunications reseller is not a marketing agent and must file this Worksheet.

B. WHICH TELECOMMUNICATIONS PROVIDERS MUST CONTRIBUTE FOR WHICH PURPOSES

Table 1 summarizes which telecommunications carriers and service providers must directly contribute for particular purposes. This chart is provided for informational purposes only. It is not intended to be exhaustive, nor is it intended to serve as legal guidance or precedent. Filers are instructed to consult the Commission's rules and orders to determine whether they must contribute to one or more of the mechanisms. *See* 47 CFR §§ 52.17, 52.32, 54.706, 64.604.

Table 1: Which Telecommunications Providers Must Contribute for Which Purposes

Type of filer	Universal Service	TRS	NANPA	LNPA
Non-interconnected VoIP providers with no other telecommunications revenues		X		
De minimis payphone aggregators that do not also have telecommunications carrier revenues		X		
Other payphone aggregators that do not also have telecommunications carrier revenues	X	X		
De minimis telecommunications providers (including audio-bridging service providers) with no telecommunications service revenues				
Other telecommunications providers (including audio-bridging providers) with no telecommunications service revenues	X			

[20] *See Universal Service First Report and Order*. 12 FCC Rcd at 9187, para. 800.

Telecommunications carriers that provide only intrastate service or services only to other universal service contributors			X	X
Telecommunications carriers that provide only international services		X	X	X
De minimis interstate telecommunications carriers (including satellite carriers and common-carriage stand-alone audio-bridging service providers) and *de minimis* interconnected VoIP providers		X	X	X
All other interstate telecommunications carriers (including satellite carriers and common-carriage stand-alone audio-bridging service providers) and all other interconnected VoIP providers	X	X	X	X

As shown above, some providers may be exempt from contributing to USF, but nevertheless must file this Worksheet because they are required to contribute to TRS, NANPA, or LNPA. If an entity is not required to contribute to any of these support mechanisms, then it is not required to file this Worksheet.

- For USF purposes, these non-contributors must be treated as end users by their underlying carriers and therefore may end up contributing indirectly as a result of USF pass-through surcharges.
- Providers who do not file this Worksheet because they are *de minimis* for USF contribution purposes, and need not file for any other purpose, should retain the table contained in Appendix A and documentation of their contribution base revenues for five calendar years after the date each Worksheet is due.[21]
- Interconnected VoIP providers who are *de minimis* must file this Worksheet and retain the table and documentation of their contribution base revenues for five calendar years after the date each Worksheet is due.[22]

FILING BY LEGAL ENTITY

Each legal entity providing interstate telecommunications for a fee or providing interstate interconnected VoIP service, including each affiliate or subsidiary of an entity, must separately complete and file a copy of the Worksheet, except as provided below.[23] Entities with distinct articles of incorporation, articles of

[21] *See* 47 CFR § 54.706(e) ("Any entity required to contribute to the federal universal service support mechanisms shall retain, for at least five years from the date of the contribution, all records that may be required to demonstrate to auditors that the contributions made were in compliance with the Commission's universal service rules"); *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight*, WC Docket No. 05-195, Report and Order, 22 FCC Rcd 16372, 16386–87, para. 27 (2007) (*USF Comprehensive Review Order*). Section § 54.711(a) of the Commission's rules, 47 CFR § 54.711, also requires contributors to "maintain records and documentation to justify information reported in the Telecommunications Reporting Worksheet, including the methodology used to determine projections, for three years and shall provide such records and documentation to the Commission or the Administrator upon request."

[22] *Id.*

[23] *See* 47 CFR § 64.1195 (outlining the Commission's registration requirements).

formation, or similar legal documents are separate legal entities. Each affiliate or subsidiary should identify their ultimate controlling parent or entity on Block 1, Line 106.

Entities filing on a consolidated basis must each year certify they meet all of the following conditions:[24]

- A single entity oversees the management of all affiliated systems;
- A single entity sends bills to customers identifying it (or a trade name) as the service provider, rather than identifying the individual legal entities;
- All revenues are posted to a single general ledger;[25]
- If separate revenue and expense accounts exist, they are derived from one consolidated set of books and the consolidated filing must cover all revenues contained in the consolidated books;
- Customers have a single point of contact;
- The consolidated filer acknowledges that process served on it would represent process served on any or all of the affiliated legal entities;
- The consolidated filer agrees to document and resolve all slamming complaints that might be served on either it or any of the affiliated legal entities;[26]
- The consolidated filer obtains a separate FCC Registration Number (FRN) from those assigned to its affiliated legal entities;
- The consolidated filer acknowledges that its universal service, TRS, LNP, NANPA, and regulatory fee obligations will be based on data provided in the consolidated Worksheet filings, that it bears the responsibility of satisfying those obligations, and that all legal entities covered by the filing are jointly and severally liable for such obligations; and
- The consolidated filer acknowledges that it: (1) was not insolvent on the date it undertook to make payments on a consolidated basis or on the date of actual payments to universal service, TRS, LNP, NANPA, and regulatory fees, and did not become insolvent as a result of such undertaking or payments; (2) was not left with unreasonably small capital as a result of such undertaking or payments; and (3) was not left unable to pay debts as they matured as a result of such undertaking or payments.[27]

This certification should be filed with the Commission's Data Collection Agent (*see* address in Table 3) and must also include:

[24] *See 1998 Biennial Regulatory Review—Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms*, CC Docket 98-171, Report and Order, 14 FCC Rcd 16602 (1999) (*Consolidated Reporting Order*); *Federal-State Joint Board on Universal Service et al.*, CC Docket No. 96-45 *et al.*, Further Notice of Proposed Rulemaking and Report and Order, 17 FCC Rcd 3752 (2002) (*2002 First Contribution Methodology Order and FNPRM*).

[25] The FCC Form 499 Filings for the consolidated filer must reflect all revenues in this general ledger.

[26] A Commercial Mobile Radio Service (CMRS) carrier that is not subject to certain slamming regulations is not required to certify that it will document and resolve all slamming complaints that might be served on either the filer or any of its affiliated legal entities that also are not subject to the slamming regulations.

[27] For purposes of this certification, the term "insolvent" means either unable to pay debts when due or having liabilities greater than assets. *See* 11 U.S.C. § 101(32).

- A list of the legal names of all the legal entities covered by the filing. See instructions to Line 112.
- The FCC Form 499 Filer IDs of all the legal entities covered by the filing
- The consolidated filer's FRN
- For wireless carriers, a list of all radio licenses (call signs) issued to each legal entity covered by the filing

Filers filing on a consolidated basis should be aware that any penalties associated with failure to pay or underpayment of any of its obligations will be assessed on the total revenue reported on the consolidated basis, rather than on a separate legal entity basis.

C. HOW TO FILE

1. NO FILING FEE

There is no fee to file this form.

2. WHEN TO FILE

This section provides the filing schedule and relevant filing addresses. If a filing date is a holiday (as defined in section 1.4(e)(1) of the Commission's rules), Worksheets are due the next business day. *See* 47 CFR § 1.4(e)(1).

Table 2: Filing Schedule for One-Time Requirements

What to file	When to file	Where to file
New telecommunications carriers and other telecommunications providers must register with the Commission when they begin to provide service.[28] Registration with the Commission includes obtaining an FCC registration number ("FRN") from the Commission registration system ("CORES") and obtaining a Filer ID from USAC's E-File system.	Upon beginning to provide service, but no later than 30 days after beginning to provide service.	FCC (to obtain an FRN) https://apps.fcc.gov/coresWeb/publicHome.do USAC (to obtain a 499 Filer ID) http://www.universalservice.org/cont/filers/obtain-a-filer-id.aspx
New carriers and VoIP providers (including interconnected and non-interconnected) must identify an agent for service of process within the District of Columbia. Although alternate agents may be included in the filing, a resident D.C. agent must be designated.		Such information is provided at Page 2, Block 2 of the FCC Form 499-A.

[28] Registration information includes information reported in Blocks 1 and 2 of the Telecommunications Reporting Worksheet.

What to file	When to file	Where to file
Filers must update their registration information, including a DC Agent for Service of Process in accordance with these instructions to the FCC Form 499-A.	Within one week of the contact information change.	Filers wishing to update Preparer information, headquarter address, billing contact information, or DC Agent for Service of Process, can submit either an FCC Form 499-A or an FCC Form 499-Q or, for billing-related matters only, email USAC's billing department.[29] Filers wishing to update any other information must submit a revised FCC Form 499-A. For more information, see http://www.universalservice.org/cont/filers/making-revisions.aspx.
Filers that cease providing telecommunications must deactivate their Filer ID with USAC by submitting a letter with termination date and information on their successor entity to USAC. Filers must also update their CORES ID information with the Commission	Within 30 days of the date that the company ceased providing service.	FCC https://apps.fcc.gov/coresWeb/publicHome.do USAC http://www.universalservice.org/cont/tools/merger.aspx

Table 3: Filing Schedule for Annual Reporting Requirements

What to file	When to file	Where to file
Completed FCC Form 499-A	April 1	Data Collection Agent http://forms.universalservice.org
Completed FCC Form 499-Q (universal service contributors only)	February 1 May 1 August 1 November 1	Data Collection Agent c/o Universal Service Administrative Company http://forms.universalservice.org
Traffic studies relied on by providers to report interstate revenues on FCC Form 499-Q *See* section IV.C.5.h for format and content requirements for traffic studies	February 1 May 1 August 1 November 1	File one copy with: Data Collection Agent c/o Universal Service Administrative Company form499@usac.org
Consolidated filer certification *See* section III.B for format and content requirements for consolidated filer certification	April 1	Data Collection Agent c/o Universal Service Administrative Company form499@usac.org

Do not send universal service, TRS, NANPA or LNPA contributions with the Worksheet or to any of the above listed addresses. The appropriate administrators will calculate the amount of contribution due and

[29] Filers seeking to update limited DC agent information such as an address and/or telephone number change for more than twenty registrations at one time may contact USAC and request permission to submit a summary Excel-styled document containing these changes. Generally, changing an agent requires submission of an FCC Form 499-A with the accompanying signature of the filer.

send a bill to the billing contact person and billing address identified on Line 208 of the FCC Form 499-A. *See* Table 4 for contribution bases used by the USF, TRS, NANPA and LNPA administrators to determine contribution obligations.

3. ELECTRONIC FILING

Filers capable of accessing the Internet are required to file this form electronically. For information on filing electronically, go to http://www.usac.org/about/tools/e-file.aspx.

Filers may file the consolidated filer certifications, and traffic studies by submitting paper copies to: **Form 499 Data Collection Agent c/o USAC, 700 12th Street N.W., Suite 900, Washington, D.C. 20005**.

D. OBLIGATION TO FILE REVISIONS

Line 612 provides check boxes to show whether the Worksheet is the original April 1 filing for the year, a registration form for a new filer, a revised filing with updated registration information, or a revised filing with updated revenue data for the year.

Filers must submit a revised Form 499-A if there is any change in any of the following types of information:

- Filer identification in Block 1
- Regulatory contact information in Block 2-A
- Agent for service of process in Block 2-B
- FCC registration information in Block 2-C

Filers must also submit revised worksheets if they discover an error in their revenue data.

- Since companies generally close their books for financial purposes by the end of March, such filers should base the April filing on closed books.
- In filing a revised Worksheet, filers should not include routine out-of-period adjustments to revenue data unless such adjustments would affect a reported amount by more than ten percent.
- **Filers must submit any revised Worksheet <u>that would result in decreased contributions</u> by March 31 of the year after the original filing due date.**[30]

Filers should <u>not</u> file revised revenue information to reflect mergers, acquisitions, or sales of operating units.

- If a filer that submitted a Form 499-A no longer exists, its successor company is responsible for continuing to make assessed contribution or true-up payments, if any, for the funding period and must notify the Form 499 Data Collection Agent.
- If the operations of an entity ceased during the previous calendar year and are now part of a successor, the successor must include the previous calendar year revenues of the now-defunct entity with its own Worksheet. Thus, it is the successor company's responsibility to ensure that the revenues for both companies for the previous calendar year are accounted for in their entirety.

[30] *See Federal-State Joint Board on Universal Service et al.*, CC Docket No. 96-45 *et al.*, Order, 20 FCC Rcd 1012, 1013, para. 2 (Wireline Comp. Bur. 2004), *pet. for recon. and applications for review pending*.

- The entity that ceased operations may owe, or its successor may owe, additional universal service contributions or may be due refunds, depending on how its FCC Form 499-A Worksheet compares to previously filed FCC Form 499-Q Worksheets.
    - Such entities are not liable for TRS, LNP, or NANPA contributions for the upcoming year. Check the appropriate boxes on Line 603 and write "Not in business as of filing date" on the explanation line.

E. RECORDKEEPING

Filers shall maintain records and documentation to justify information reporting on the Worksheet, including the methodology used to determine projections and to allocate interstate revenues, for five years.[31] Additionally, filers must make available all documents and records that pertain to them, including those of contractors and consultants working on their behalf, to the Commission's Office of Inspector General, to the Universal Service Administrative Company (USAC), and to auditors upon request.[32] Review by the Commission or USAC may cover any existing corporate records, not just those specifically maintained for these purposes.[33] Entities acquiring carrier operations through consolidation, merger, etc., must maintain the records of the acquired entity.[34]

F. COMPLIANCE

Failure to file the Worksheet, submit traffic studies (if applicable), and pay contributions in a timely fashion may subject entities to the enforcement provisions of the Communications Act and any other applicable law.[35] In addition, entities may be billed by the administrators for reasonable costs, including interest and administrative costs that are caused by late, inaccurate, or untruthful filing of the Worksheet or overdue contributions.[36] Inaccurate or untruthful information contained in the Worksheet may lead to prosecution under the criminal provisions of Title 18 of the United States Code.[37]

G. ROUNDING OF NUMBERS AND NEGATIVE NUMBERS

Dollar Amounts. — Reported revenues in Blocks 3, 4, and 5 greater than one thousand dollars may be rounded to the nearest thousand dollars. All dollar amounts must be reported in whole dollars. For example, $2,271,881.93 could be reported at $2,271,882 or $2,272,000, but not $2272 thousand,

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[31] *See* 47 CFR § 54.706(e) ("These records shall include without limitation the following: Financial statements and supporting documentation; accounting records; historical customer records; general ledgers; and any other relevant documentation.").

[32] *See id*.; 47 CFR § 54.711(a).

[33] *See* 47 U.S.C. § 218.

[34] *See* 47 CFR § 42.1.

[35] In addition, pursuant to the Debt Collection Improvement Act of 1996, the Commission shall withhold action on applications or other requests for benefits by delinquent debtors and dismiss those applications or other requests if the delinquent debt is not paid or satisfactory arrangement for payment is not made. *See* 47 CFR § 1.1910; *Amendment of Parts 0 and 1 of the Commission's Rules, Implementation of the Debt Collection Improvement Act of 1996 and Adoption of Rules Governing Applications or Requests for Benefits by Delinquent Debtors*, MD Docket No. 02-339, 19 FCC Rcd 6540 (2004).

[36] *See* 47 CFR § 54.713 (universal service); 47 CFR § 64.604(c)(5)(iii)(A) and (B) (TRS); *see also* 47 CFR § 52.17(b) (NANPA); 47 CFR § 52.32(c) (LNPA).

[37] *See* 47 CFR § 54.711.

$2,270,000.00, $2,271,881.93, or $2.272 million. Enter $0 in any line for which the filer had no revenues for the year.

Negative Numbers. — Filers are directed to provide billed revenues without subtracting any expenses, allowances for uncollectibles, or settlement payments and without making out-of-period adjustments. Therefore, do not enter negative numbers on any billed revenue lines on the Worksheet. *See* instructions for Lines 421 and 422 regarding uncollectibles.

IV. SPECIFIC INSTRUCTIONS

A. BLOCK 1: FILER IDENTIFICATION INFORMATION

Block 1 of the Telecommunications Reporting Worksheet reports identification information.

Line 101 499 Filer ID

USAC assigns an FCC Form 499 Filer ID number once a company completes the online registration process at https://efileweb.usac.org/ContributorRegistration/V2. This number is then used for the company to file subsequent FCC Forms 499. Filer 499 ID numbers can be found at:

- FCC Form 499 Filer Database (http://apps.fcc.gov/cgb/form499/499a.cfm)
- Telecommunications Provider Locator (https://www.fcc.gov/encyclopedia/telecommunications-provider-locator)

First time filers should write "New" in the block. New filers will be assigned a Filer 499 ID number after submitting a completed Worksheet.

Line 102 Legal Name of Filer

Enter the legal name of the filer as it appears on articles of incorporation or articles of formation and other legal documents. Each legal entity must file a separate Worksheet unless affiliated entities are filing on a consolidated basis. *See* section III.B.

Line 103 IRS Employer Identification Number

Enter the Internal Revenue Service (IRS) employer identification number (EIN) for the filer, which should be the same EIN that the company uses to file any federal taxes, if the filer offers services subject to such taxes.

- Do not use individual social security numbers for the federal EIN.
- If a filer lacks an EIN (*i.e.* has no taxpayer identification number to provide other than an individual social security number), it should contact USAC (see section II for contact information) so that it can be assigned an alternative identification number.
- Consolidated filers must provide the EIN of the holding company.

Line 104 Doing Business As Name

Enter the principal name under which the filer conducts telecommunications activities, typically the name that appears on customer bills or the name used when service representatives answer customer inquiries.

Line 105 Telecommunications Activities of Filer

Mark the boxes that describe the telecommunications activity or activities of the filer. If more than one is appropriate, label the activities in order of importance to the filer's business. Enter a 1 in the box that is the most important activity, a 2 in the next most important, etc., but select no more than 5 categories. An explanation of the categories appears in Appendix B.

Line 106 Affiliated Filers/ Holding Company Information

Enter a common identifier for all affiliated filers (the "Affiliated Filers Name"). This is typically the name of the filer's holding company or controlling entity, if any. Amongst a large group of affiliates, this may be the name of the predominant commonly owned or controlled entity. All reporting affiliates or commonly owned entities should have the same Affiliated Filers Name and IRS employer identification number appearing on Line 106.1 and 106.2 respectively. For those entities also required to file FCC Form 477, use the same single name that is used in the FCC Form 477 to indicate common ownership or control.

- Unless otherwise specifically provided, an affiliate is a "person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person."[38] For this purpose, the term 'owns' means "to own an equity interest (or the equivalent thereof) of more than 10 percent."[39]
- If the filer has no affiliates, check the appropriate box on Line 106.

Line 107	**FCC Registration Number**

Enter the FCC Registration Number (FRN) of the filer. The FRN is a ten-digit number that includes a check-digit and is used to identify an entity within all Commission Licensing/Filing systems and the Commission's Revenue Accounting Management Information System (RAMIS). The number is assigned by the Commission Registration System (CORES). For more information, *see* https://fjallfoss.fcc.gov/coresWeb/publicHome.do.

Line 108	**Management Company**

Enter the name of the management company if the filer is managed by an entity other than itself. If the filer and one or more telecommunications provider(s) are commonly managed, then each should show the same management company on Line 108. Filers need not be affiliated to have a common management company. The management company would typically be the point of contact for the administrators of the support mechanisms.

Line 109	**Mailing Address of Corporate Headquarters**

Enter the complete mailing address of the corporate headquarters of the filer.

Lines 110-111	**Business Address/ Telephone Number for Customer Inquiries and Complaints**

Line 110. — Enter a business address for the filer that could be used either for customer inquiries or that parties could use to contact the filer in order to resolve complaints. Check the box if this address is the same as the mailing address of the corporate headquarters on Line 109.

Line 111. — Enter a telephone number that can be used to resolve customer complaints, for customer service, or for billing inquiries, such as a customer toll-free number.

Line 112	**Trade Names**

Enter all names that the filer used in the past three years for providing telecommunications.

- Enter all names by which the filer would be known to customers, government bodies, creditors, the press, etc.

[38] *See* 47 U.S.C. § 153(2).

[39] *Id.*

- Consolidated filers should provide all names used by all telecommunications affiliates covered by the filing.
- The list must include the filer's billing agents if those parties, rather than the filer, are identified on customer bills.
- The list should also include names of predecessor companies that would have contributed to universal service, TRS, NANP, or LNP or filed a Telecommunications Reporting Worksheet in the prior year. In such cases, include the prior Filer 499 ID as part of the name, as this information will be used by the administrators in instances where other information indicates that a non-filer might exist and also to ensure that entities are not billed improperly for predecessor companies that no longer exist.
- If there is insufficient space to enter all names, contact USAC.

B. BLOCK 2: CONTACT INFORMATION

Block 2 of the Telecommunications Reporting Worksheet reports contact information for regulatory and billing purposes.

1. BLOCK 2-A: REGULATORY CONTACT INFORMATION

Line 201	499 Filer ID

Enter the Filer 499 ID from Line 101.

Line 202	Legal Name of Filer

Enter the legal name of the filer from Line 102.

Line 203-206	Person Who Completed This Worksheet/ Contact Information

Enter the name, telephone number, and fax number of the person who filled out the FCC Form 499. An email address is also required and will not be publicly released. This person should be able to provide clarifications or additional information and, if necessary, serve as the first point of contact if either the Commission or an administrator should choose to verify or audit information provided in the Worksheet.

Line 207	Corporate Office to Which Correspondence Should Be Sent

Enter the contact person name, office name, and mailing address of a corporate office to which correspondence regarding this Worksheet should be sent. An email address is also required and will not be publicly released. USAC does NOT send Worksheets to this address; all Worksheets must be filed using USAC's electronic filing system. Failure to receive a Worksheet from an administrator or the FCC does not relieve the filer from its obligation to file in a timely fashion.

Line 208	Billing Contact Information

Line 208 — Enter a billing contact person name and address for administrators to send billing information for contributions. An email address is also required and will not be publicly released. Information on establishing electronic fund transfer and bills for universal service, TRS, NANPA, or LNPA contributions will be sent to this address unless other arrangements are made via written request.

Line 208.1 — An FCC ITSP regulatory fee bill, if due, will be sent to the email address specified on Line 208.1. FCC inquiries regarding ITSP regulatory fees will also be sent to this email address. Carrier questions regarding ITSP regulatory fee bills should be directed to the FCC Financial Operations Help Desk, 877-480-3201.

Although a filer may or may not use the same contact information for Lines 207 and 208, it is the filer's responsibility to ensure that accurate information is provided on both lines. A filer will be responsible for

any late fees, interest or penalties incurred as a result of its failure to provide accurate contact information on this form.

2. BLOCK 2-B: AGENT FOR SERVICE OF PROCESS

Section 413 of the Act requires each common carrier "to designate in writing an agent in the District of Columbia" upon whom all notices, process, orders, and decisions made by the Commission may be served on behalf of that carrier in any proceeding pending before the Commission. The Commission has also extended this requirement to interconnected and non-interconnected VoIP providers.[40]

Lines 209-218	**Agent for Service of Process**

Carriers, interconnected VoIP providers, and non-interconnected VoIP providers must enter the company name, contact person name, business address, telephone or voicemail number, fax number, and, if available, email address for their designated D.C. Agent.

Carriers, interconnected VoIP providers, and non-interconnected VoIP providers *must* designate a *single* agent for service of process in D.C. for all Commission business. Service of any notice, process, orders, decisions, and requirements of the Commission may be made upon the filer by leaving a copy thereof with this designated agent during normal business hours at the agent's office or other usual place of residence.

In addition to this information, the filer may elect to provide a local or alternate agent for service of process located outside D.C. Filers other than carriers, interconnected VoIP providers, and non-interconnected VoIP providers need only report one agent for service of process, whether located inside D.C. or otherwise. Although the FCC Form 499-A permits carriers, interconnected VoIP providers, and non-interconnected VoIP providers to designate a preferred alternate or local agents for service of process, each designated agent for a particular carrier, interconnected VoIP provider or non-interconnected VoIP provider must accept service for all purposes relating to Commission business. A carrier, interconnected VoIP provider or non-interconnected VoIP provider may not limit a designated agent's ability to accept service on behalf of the carrier, interconnected VoIP provider or non-interconnected VoIP provider by subject matter, jurisdiction, affiliate or any other grounds. The Commission may assume that the local or alternate agent is the filer's preferred destination for all service of process.

New carriers and VoIP providers (including interconnected and non-interconnected) must identify an agent for service of process must register with the FCC within 30 days of providing service, and all carriers or VoIP providers (including interconnected and non-interconnected) must notify USAC within one week if the contact information changes for their D.C. Agent. *See* Table 2 for more information.

3. BLOCK 2-C: FCC REGISTRATION INFORMATION

New telecommunications carriers and other telecommunications providers must register with the Commission when they begin to provide service. Carriers and other telecommunications providers must update registration information within one week of a material change. Registration information includes information reported in Blocks 1 and 2 of the Telecommunications Reporting Worksheet.

Lines 219-226	**FCC Registration Information**

[40] 47 U.S.C. § 413; *see* 47 CFR § 1.47(h) (interconnected VoIP providers); *Contributions to the Telecommunications Relay Services Fund*, CG Docket No. 11-47, Report and Order, 26 FCC Rcd 14352, 14542, para. 21 (2011) (non-interconnected VoIP providers).

As explained above, virtually all carriers filing the FCC Form 499 are considered to be interstate carriers. They, along with interconnected and non-interconnected VoIP providers, must provide the names and business addresses of their Chief Executive Officer, Chairman, and President.

Refer to the following list for instructions for different types of providers:

- If the filer does not have one or more of these officers, then names should be supplied for the three most senior-level officers of the filer
- If the same person occupies more than one position, then names should be supplied for the three most senior-level officers of the filer
- If the filer is a sole proprietorship, list only one name
- If the filer is a partnership, list the managing partner on Line 221
- If the filer is owned by two partners, list the second partner on Line 223
- If there are three or more partners, list information for the managing partner and the two other partners with the greatest financial interest in the partnership

For purposes of this filing, an officer is an occupant of a position listed in the article of incorporation, articles of formation, or other similar legal document.

Line 227 Jurisdictions in Which Filer Provided/ Will Provide Service

Check those jurisdictions where the filer provided telecommunications service or interconnected VoIP service in the past 15 months, and any additional jurisdictions in which the filer expects to provide such services in the next 12 months. Identify jurisdictions where customers physically obtain service, and for switched services, identify jurisdictions where customers can originate calls. For services where the called party pays, however, also identify jurisdictions where calls terminate.[41] For example, an operator service provider that handled inmate calls originating in New Jersey and terminating collect in New Jersey, New York, and Pennsylvania would identify those three states as jurisdictions served.

Line 228 Year and Month that Filer First Provided/ Will Provide Service

Enter the year and month that the filer first provided telecommunications or interconnected VoIP service. If not yet providing either type of service, then the filer should indicate the year and month it expects to begin operations. If operations began prior to January 1, 1999, the filer may so indicate by using the check box rather than entering the specific date.

C. BLOCKS 3 AND 4-A: FILER REVENUE INFORMATION

Blocks 3 and 4-A of the Telecommunications Reporting Worksheet report revenue information for calendar year 2016.

For most filers, completing Lines 303–314 and 403–418 is a three-step process.

First, the filer must assign its gross billed revenues to reporting categories (generally, the rows on Form 499-A), which includes allocating revenues from bundled services between their telecommunications and non-telecommunications components. *See* Section IV.C.2.

Second, the filer must attribute telecommunications revenues derived from sales to contributing resellers (Block 3 on Form 499-A) or from sales to end users (Block 4 on Form 499-A). *See* Section IV.C.4.

[41] Both parties to a collect call are "consumers." 47 C.F.R § 64.708; *see* 47 C.F.R § 64.710(b)(1).

Third, the filer must apportion its telecommunications revenues between the intrastate, interstate, and international jurisdictions (generally, the columns on the FCC Form 499-A). *See* Section IV.C.5.

1. FILER IDENTIFICATION

Line 301 **Line 401**	**499 Filer ID**

Enter the Filer 499 ID from Line 101.

Line 302 **Line 402**	**Legal Name of Filer**

Enter the legal name of the filer from Line 102.

2. GROSS BILLED REVENUES – GENERAL

Report gross billed revenues as directed.

- Note on Gross Earned Revenues Reporting. — Filers that maintain records in accordance with Generally Accepted Accounting Principles and that record revenues when earned instead of when billed, may use earned revenues to represent billed revenues as long as they do so consistently from reporting period to reporting period. Filers using earned revenues to represent billed revenues need not impute earned revenue for redeemed credits if no earned revenue is recorded when credits are redeemed. To the extent that earned revenues are net of any uncollectible amounts, these uncollectible amounts must not be included on Line 421 or Line 422.

Gross billed revenues include:

- Revenues from all sources, including non-regulated telecommunications offerings, information services, and other non-telecommunications services.
- Total revenues billed to customers during the filing period with no allowances for uncollectibles, settlements, or out-of-period adjustments.
- Gross billed revenues include:
  - Account set-up
  - Connection
  - Service restoration
  - Termination
  - Revenues derived from the activation and provision of interstate, international, and intrastate telecommunications and non-telecommunications services
  - Collection overages and unclaimed refunds for telecommunications and telecommunications services when not subject to escheats
  - Surcharges on telecommunications services or interconnected VoIP services that are billed to the customer and either retained by the filer or remitted to a non-government third party under contract
  - Any other non-recurring charges.

  These charges should be reported on the same line that the filer reports any associated recurring revenue.

Gross billed revenues do NOT include:

- Deposits

- Amounts that cannot be billed to customers and may be distinct from booked revenues
- Taxes and surcharges that are not recorded on the company books as revenues, but are instead remitted to government bodies.
    - BUT any charge on a customer bill represented to recover or collect contributions to federal and state universal service support mechanisms must be shown separately on Line 403.

Special cases:

- National Exchange Carrier Association (NECA) pool companies should report the actual gross billed revenues (CABS Revenues) reported to the NECA pool and not settlement revenues received from the pool.
- Entities making consolidated filings must include in their FCC Form 499 Filings all revenue on the consolidated books of account.
- Credits should not be deducted from billed revenues when the credit is issued. Instead, filers should include redeemed credits with uncollectible amounts reported on Line 421 and Line 422.
- Mergers and acquisitions: When two filers merge, the successor company should report total revenues for the reporting period for all predecessor operations, unless the filers maintain separate corporate identities and both continue to operate. In that special case, each filer should continue to report its revenues separately.[42] Where an entity obtains, by any means whatsoever, the telecommunications operations or customer base of a filer, and the acquired company does not file its own FCC Form 499-A, the acquiring company must report all telecommunications revenues associated with such operations or customer base including revenues billed in the calendar year prior to the date of acquisition.
- International Services: For international services, gross billed revenues consist of gross revenues billed by U.S. telecommunications providers with no allowances for settlement or settlement-like payments. International settlement and settlement-like receipts for foreign-billed service should not be included in U.S. telecommunications revenues. Note that if the filer receives the foreign-bound traffic in the United States, then it is providing ordinary international service from the United States to a foreign point; receipts from the originating carrier should be reported as revenue on Line 414. Filers may report international revenues in section 43.62 reports that are net of credits at the time the credits are issued.

  For carriers providing international telecommunications services, the total revenues identified as international on Line 419(e) should match the total U.S. billed revenues that will be reported each year pursuant to 47 CFR § 43.62 except in very limited circumstances, such as receipts from foreign carriers for calls that are reoriginated and reported as U.S. billed traffic. For example, if a filer receives payment from a foreign carrier for traffic that the filer receives outside of the United States, brings into the United States, and then refiles and carries to a foreign point, the filer would not include those settlement-like payments as revenues on Line 414 of the FCC Form 499-A even though they might be reported as revenues on the filer's 43.62 international traffic data report. Instead, those amounts would be reported on Line 418. Revenue from circuits within the United States that connect a customer to an international circuit should be reported as interstate. Revenue from circuits that connect foreign points should be reported on Line 418.

[42] *See* Section III.C.

3. APPORTIONING REVENUES AMONG REPORTING CATEGORIES

a. General Information

Good-faith estimates

If revenue category breakout cannot be determined directly from corporate books of account or subsidiary records, filers may provide on the Worksheet a good-faith estimate of the breakout.

- Good-faith estimates should be based on information that is current for the filing period.
- Filers should maintain documentation for good-faith estimates and entities may not simply report all revenues on one of the "other revenue" lines.

Column (a) required

Filers with any revenues for Lines 303–314 and 403–420 may not omit the dollar amounts from column (a), even if all of the revenues are for interstate or international services.

Block 3 vs. Block 4 revenues

Filers may report revenues from contributing resellers (i.e., universal service contributors) on Lines 303 through 314 and must report all other revenues on Lines 403 through 418. *See* Section IV.C.4 for additional information on reporting revenues from resellers.

- In many cases, the line-item categories are duplicated in Block 3 and Block 4.
- *Intercarrier compensation and universal service support:* The following categories of revenues are not end-user revenue and are reported in Block 3. For these revenue items, the filer is not required to retain Filer 499 ID information or verify that the customer is a reseller.

Category of Revenue	**Report on**
Per-minute switched access charges and reciprocal compensation	Line 304
Revenues received from carriers as payphone compensation for originating toll calls	Line 306
Charges for physical collocation of equipment pursuant to 47 U.S.C. § 251(c)(6)	Line 307
Revenues that filers receive as universal service support from either states or the federal government	Line 308
Revenues received from another U.S. carrier for roaming service provided to customers of that carrier	Line 309

- *Carriers required to use the USOA:* Carriers that are required to use the Uniform System of Accounts (USOA) prescribed in Part 32 of the Commission's rules should base their responses on their USOA account data and supplemental records, dividing revenues into

those received from universal service contributors and those received from end users and other non-contributors.[43]

- *Certain international switched service revenues*: An underlying carrier also may include as carrier's carrier revenues any international switched service revenues received from another U.S. reselling carrier where that reselling carrier is using the underlying carrier's service to re-file the foreign-billed traffic of a foreign telephone operator. In this case, the reselling carrier must certify to the underlying carrier that it is using the resold international switched service to handle traffic that both originates and terminates in foreign points.

All filers should report revenues based on the following descriptions.

b. **Fixed local service revenue categories**

Fixed local services connect a specific point to one or more other points. These services can be provided using either wireline, fixed wireless, or interconnected VoIP technologies and can be used for local exchange service, private communications, or access to toll services.

Line 303 (Carrier's carrier) **Line 404 (End user)**	**Monthly service, local calling including message and local toll charges, connection charges, vertical features, and other local exchange services**

Lines 303 and 404 should include the basic local service revenues, except for:

- local private line revenues (reported on Lines 305 and 406);
- business data services revenues (reported on Lines 305 and 406);
- revenues from providing mobile or cellular services (reported on lines 309, 409, and 410);
- subscriber line charges levied under a tariff filed by the filer or placed on customer bills as a pass-through of underlying carrier subscriber line charges (reported on line 405).

Lines 303 and 404 should include charges for:

- optional extended area service;
- dialing features;
- local directory assistance;
- added exchange services such as automatic number identification (ANI) or teleconferencing;
- LNP surcharges;
    - Revenues from federally tariffed LNP surcharges should be reported on Line 404, and should be identified as interstate revenues.
- connection charges;
- charges for connecting with mobile service; and
- local exchange revenue settlements.

Interconnected VoIP providers not reporting based on the safe harbor that bundle fixed local exchange service with interstate toll services at a unitary price must determine the appropriate portion of revenues

[43] *See* section IV.C.4.

to allocate to interstate and international toll service, in a manner that is consistent with their supporting books of account and records.

Filers should break out Line 303/404 revenues as follows:

Carrier's Carrier Revenue

Line 303.1	Revenues for services provided to carriers as unbundled network elements (UNEs).
Line 303.2	Revenues for services provided to carriers under tariffs or arrangements other than unbundled network elements (for example, resale). Line 303.2 should also include Presubscribed Interexchange Carrier Charge (PICC) charges levied on carriers.

End-User Revenue

Line 404.1	Local service portion of revenues from local exchange service plans (other than interconnected VoIP plans) that include interstate calling as part of the flat monthly fee.
Line 404.2	Toll portion of revenues from local exchange service plans (other than interconnected VoIP plans) that include interstate calling as part of the flat monthly fee. (Note: if the revenue from the toll portion of such service is attributed to an affiliate, that affiliate must report such revenues on Line 404.2, not on Line 414).
Line 404.3	Revenues from local exchange services plans (other than interconnected VoIP plans) that do not include interstate calling.
Line 404.4	Revenues from local service provided via interconnected VoIP service offered in conjunction with a broadband connection.
Line 404.5	Revenues from local service provided via interconnected VoIP service offered independent of the broadband connection.[44]

Line 304	**Per–minute charges for originating or terminating calls**

This line includes:

- Per–minute charges for originating or terminating calls, including charges related to originating or terminating VoIP-PSTN traffic.[45]

[44] Bundled offerings include those offered directly by the filer and those offered by the filer through an affiliate.

[45] *See Connect America Fund et al*., WC Docket No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 18005-08, paras. 940-42 (2011) (*USF/ICC Transformation Order)*, aff'd.,*sub nom.* In re: FCC 11-161, 753 F.3d 1015 (10th Cir. 2014) (setting forth default intercarrier compensation rates for VoIP-PSTN traffic); *Connect America Fund et al*., WC Docket No. 10-90 *et al.*, Second Order on Reconsideration, 27 FCC Rcd 4648, 4659-4663, paras. 30-35 (2012) (the Commission allowed local exchange carriers (LECs) to tariff default rates equal to their intrastate originating access rates for originating intrastate toll VoIP traffic until June 30, 2014, after which time LECs are to tariff default rates for such traffic equal to their interstate originating access rates).

- Revenues to the local exchange carrier for messages between a cellular customer and another station within the mobile service area.
- Any other gross charges to other carriers for the origination or termination of toll or non-toll traffic.
- Direct trunk transport, port charges, mileage charges and rearrangement charges that are normally treated as access charge revenues.[46]

Do not deduct or net payments to carriers for origination or termination of traffic on their networks.

This line does not include:

- International settlement or settlement-like receipts or transiting fees from international toll services.

Filers should break out Line 304 revenues as follows:

Line 304.1	Revenues for originating and terminating minutes provided under state or federal access tariffs.
Line 304.2	Revenues for originating and terminating minutes provided as unbundled network elements or other contract arrangements.

Line 405	**Tariffed subscriber line charges, Access Recovery Charges, and PICC charges levied by a local exchange carrier on a no-PIC customer**

Line 405 should include charges to end users specified in access tariffs, such as tariffed subscriber line charges (SLCs), Access Recovery Charges (ARCs),[47] and Primary Interexchange Carrier Charges (PICCs) levied by a local exchange carrier on customers that are not presubscribed to an interexchange carrier (i.e., a no-PIC customer). Note that federal SLCs are separate from toll revenues.

Line 405 should not include charges to end users for business data services (which are reported on Line 406).

The Commission does not regulate how non-incumbent LECs recover the costs of the local loop, nor does it require non-incumbents to assess a non-traffic sensitive charge for the costs of providing interstate or interstate access service from their customers through a separately stated end user charge. To the extent non-incumbent contributors choose to assess a separately stated charge for the interstate portion of fixed local exchange service or interstate exchange access, they should report such revenues on Line 405 and allocate those revenues to the interstate jurisdiction, for USF contribution reporting purposes, in a manner that is consistent with their supporting books of account and records.[48]

[46] 47 CFR Part 69.

[47] The Commission allowed incumbent LECs to assess an ARC on certain wireline telephone customers, a rule adopted as part of comprehensive intercarrier compensation reform. *See USF/ICC Transformation Order*, 26 FCC Rcd at 17956-17961, 17987-17994, paras. 847-853, 905-916. The ARC is tariffed separately from the SLC; however, the Commission permitted carriers to combine the ARC and SLC as a single line item on a customer bill. *Id.,* 26 FCC Rcd at 17958, para. 852. For purposes of reporting revenues on Line 405, incumbent LECs should include all revenues collected from ARCs.

[48] For example, to the extent that a contributor's tariff filing (or equivalent) indicates that a non-traffic sensitive charge is for interstate access, then revenues for such charge (or a portion thereof) must be allocated to interstate revenues for USF reporting purposes**.**

Telecommunications providers that do not have SLC, ARC or PICC tariffs on file with the Commission or with a state utility commission, that are not reselling such tariffed charges, or that do not have separately stated charges for the interstate portion of fixed local exchange service or interstate exchange access should report $0 on Line 405.

Line 305 (Carrier's Carrier) Local Private Line and Business Data Service
Line 406 (End User)

Line 406 should include:

- Revenues from providing local services that involve dedicated circuits, private switching arrangements, digital subscriber lines, and/or predefined transmission paths, including those services that provide dedicated point-to-point transmission of data at certain guaranteed speeds and service levels using high-capacity connections.
- Revenues from special access lines resold to end users unless the service is bundled with and charged as part of a toll service, in which case the revenues should be reported on the appropriate toll service line.
- Revenues from offering dedicated capacity between specified points even if the service is provided over local area switched, multi-protocol label switching (MPLS), asynchronous transfer mode (ATM), or frame relay networks.
- Revenue from broadband transmission service, including consumer broadband-only loop service, voluntarily provided on a common carrier basis to providers of retail broadband Internet access.[49]
    - Filers should report on Line 406 revenues derived from the sale of special access service on a common carrier basis to providers of retail broadband Internet access service.[50]
- All other revenues from local private line service and business data service billed to end users must be reported on Line 406.

Revenues for the provision of broadband transmission offered on a non-common-carrier basis to providers of broadband Internet access should be reported on Line 418.[51]

Amounts reported on Line 305 should be divided between:

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[49] *See Protecting and Promoting the Open Internet,* Report and Order on Remand, Declaratory Ruling and Order, GN Docket No. 14-28, 30 FCC Rcd 5601, 5836, para. 489 n.1472 (2015) (*2015 Open Internet Order)*, a*ff'd sub nom., United States Telecomms Ass'n v. FCC*, 825 F.3rd 674 (D.C. Circ. 2016), *pets. for rehearing pending*.

Pursuant to the forbearance granted in the *2015 Open Internet Order*, revenues for the provision of retail wireline broadband Internet access services should be reported on Line 418. *Id*. at 5836, para. 489.

[50] *See Universal Contribution Methodology, Application for Review of Decision of the Wireline Competition Bureau filed by Global Crossing Bandwidth, Inc., et al.*, WC Docket No. 06-122, Order, 27 FCC Rcd 13780, 13797, para. 39 n.109 (2012) (*2012 Wholesaler-Reseller Clarification Order*); *Wireline Broadband Internet Access Services Order,* 20 FCC Rcd at 14915-16, paras. 112-113 & n.357; *2006 Contribution Methodology Reform Order*, 21 FCC Rcd at 7549, para. 62 n.206.

[51] This includes rate-of-return carriers "who choose[] to detariff [their] wholesale consumer broadband-only loop offering" and "would not have a contribution obligation for that service, similar to other carriers that previously chose not to offer a separate tariffed broadband transmission service." *Connect America Fund; ETC Annual Reports and Certifications; Developing a Unified Intercarrier Compensation Regime*, WC Docket No. 10-90 et al., 31 FCC Rcd 3087, 3159, para. 193 n.428 (2016) (citation omitted). *See also Connect America Fund; ETC Annual Reports and Certifications; Developing a Unified Intercarrier Compensation Regime*, WC Docket No. 10-90 et al., 31 FCC Rcd 6856, 6862, para 24 n.39 (WCB 2016) (clarifying that the broadband-only loop offering must "not only [be] detariffed, but also offered on a private carriage basis.").

Line 305.1	Revenues for service provided to contributing resellers for resale as telecommunications.
Line 305.2	Revenues for service provided to contributing resellers for resale as interconnected VoIP.

Mixed-use private or WATS lines: If over ten percent of the traffic carried over a private or WATS line is interstate, then the revenues and costs generated by the entire line are classified as interstate.[52]

Line 306 (Carrier's Carrier) **Line 407 (End User)**	**Payphone Revenues**

Line 306 should include revenues received from carriers as payphone compensation for originating toll calls.

Line 407 should include revenues received from customers paid directly to the payphone service provider, including all coin-in-the-box revenues. Do not deduct commission payments to premises' owners.

Line 307 (Carrier's Carrier) **Line 408 (End User)**	**Other Local Telecommunications Service Revenues**

Include local telecommunications service revenues that reasonably would not be included with one of the other fixed local service revenue categories. Report any revenues from offering switched capacity on local area data networks such as ATM or frame relay networks.

Line 307 should include charges for physical collocation of equipment pursuant to 47 U.S.C. § 251(c)(6).

Line 308	**Universal Service Support Amounts Received from Federal or State Sources**

Universal service support revenues should include:

- All amounts that filers receive as universal service support from either states or the federal government. Include amounts received as cash as well as amounts received as credit against contribution obligations.

Do not include:

- Any amounts charged to customers to recover universal service or similar contributions.
- Charges or credits for subsidized services provided to schools, libraries, and rural health care providers. Such charges are properly reported as end user revenue.

c. Mobile service categories

Mobile services are wireless communications between mobile wireless equipment, such as cellular phones and other points.

Line 309 (Carrier's Carrier) **Line 409 and 410 (End User)**	**Mobile Services**

Data reported on these lines should contain mobile service revenues, except:

- Toll charges to mobile service customers

[52] *See Universal Service Order*, 12 FCC Rcd at 9173, para. 778 (citing 47 CFR § 36.154(a)).

  - Itemized toll charges to mobile service customers should be included in Lines 413 or 414, as appropriate.

- Charges associated with customer premises equipment
- Roaming charges for service provided by foreign carriers operating in foreign points. These charges are not U.S. telecommunications revenues and therefore should be reported on Line 418.

Filers should break out Line 309/409/410 revenues as follows:

Line 309	Revenues for all mobile service provided to contributing resellers, including revenues received from another carrier for roaming service provided to customers of that carrier.
Line 409	Revenues for mobile service provided to end users, including monthly charges, activation fees, service restoration, and service order processing charges, etc. End–user prepaid wireless service revenues attributable to activation and daily or monthly access charges should be reported on Line 409.
Line 410	Revenues for mobile service provided to end users, including message charges, any roaming charges assessed on customers for calls placed out of customers' home areas and local directory assistance charges. End–user prepaid wireless service revenues attributable to airtime should be reported on Line 410.

d. Toll service revenue categories

Toll services are telecommunications services, wireline, wireless, or interconnected VoIP services, that enable customers to communicate outside of local exchange calling areas. Toll service revenues include intrastate, interstate, and international long distance services.

For wireless providers, toll services are telecommunications services that enable customers to communicate outside the customer's plan-defined home calling area.[53] The term "home calling area" is used generally by wireless carriers to denote the plan-defined area in which a subscriber may make calls and incur no additional charges beyond the plan-specific per month charge, assuming the subscriber does not exceed the plan allotted minutes.[54]

Line 411 Prepaid Calling Cards

Include:

- Revenues from prepaid calling cards provided either to customers, distributors, or to retail establishments.
- Prepaid service where the customer utilizes the service provider's switching platform and a personal identification number (PIN) for purposes of verification and billing, even if the customer does not receive a physical card.[55]

Gross billed revenues should represent the amounts actually paid by end user customers and not the amounts paid by distributors or retailers, and should not be reduced or adjusted for discounts provided to distributors or retail establishments. All prepaid card revenues are classified as end–user revenues. For purposes of completing this Worksheet, prepaid card revenues should be recognized when end–user customers purchase the cards. The international portion of revenue, however, should be reported consistently with the filer's 43.62 international traffic data reports.

Line 310 (Carrier's carrier) Operator and toll calls with alternative billing arrangements
Line 413 (End User)

Operator and toll calls with alternative billing arrangements should include:

- All calling card or credit card calls, person-to-person calls, and calls with alternative billing arrangements such as third–number billing, collect calls, and country-direct type calls that either originate or terminate in a U.S. point
- All charges from toll or long distance directory assistance

[53] *See Universal Service Contribution Methodology, Petition for Declaratory Ruling of CTIA – The Wireless Association on Universal Service Contribution Obligations, Petition for Declaratory Ruling of Cingular Wireless, LLC*, WC Docket No. 06-122, Declaratory Order, 23 FCC Rcd 1411, 1414, para. 5 (2008) (*Separately Stated Toll Order)*.

[54] *Id.* at 1415, para. 7, n.28.

[55] *See AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services; Regulation of Prepaid Calling Card Services*, WC Docket Nos. 03-133, 05-68, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 4826, 4827–4827, para. 3 (2005) (*AT&T Prepaid Calling Card Services Declaratory Ruling*); *see also Universal Service Contribution Methodology; Request for Review of Decision of the Universal Service Administrator by Network Enhanced Telecom, LLP,* WC Docket No. 06-122, Order, 25 FCC Rcd 14533, 14538–39, paras. 12–13 (Wireline Comp. Bur. 2010) (*Network IP Order*), *petition for partial reconsideration denied*, *Request for Review of a Decision of the Universal Service Administrator by Network Enhanced Telecom, LLP*, WC Docket No. 06-122, Order on Reconsideration, 26 FCC Rcd 6169 (Wireline Comp. Bur. 2011).

- Revenues from all calls placed from all coin and coinless, public and semi-public, accommodation and prison telephones, except that:
    - Calls that are paid for via prepaid calling cards should be included on Line 411.
    - Calls paid for by coins deposited in the phone should be included on Line 407.

Line 412	**International Calls that Originate and Terminate in Foreign Points**

International calls that traverse the United States but both originate and terminate in foreign points ("transit" revenues) are excluded from the universal service contribution base.

- Carrier's carrier (reseller) transit revenues should be reported on Line 311.
- End-user transit revenues should be segregated from other toll revenues by showing them on Line 412.

Telecommunications providers should not report international settlement revenues from traditional settlement transiting traffic on the Worksheet.

Line 311 (Carrier's carrier) **Line 414 (End User)**	**Ordinary Long Distance**

Filers should report ordinary long distance revenues on these lines, including:

- Revenues from most toll calls placed for a fee
- Flat monthly charges billed to customers, such as account maintenance charges, PICC pass-through charges, and monthly minimums
- Ordinary message telephone service (MTS), WATS, subscriber toll-free, 900, "WATS-like," and similar switched services
- Separately stated toll revenue from wireline, wireless, and interconnected VoIP services.[56]

Do not include:

- Revenues for the toll portion of flat rated local service (other than interconnected VoIP service), regardless of whether this portion of revenue is reported by a local exchange carrier or by its toll affiliate. Report such revenues on Line 404.2.
- Revenue for the toll portion of flat rated interconnected VoIP local service. Report such revenues on Line 404.4 or Line 404.5, as appropriate.

Ordinary long distance revenues should be reported as follows:

Line 311	Ordinary long distance provided to contributing resellers.
Line 414.1	Ordinary long distance provided to end users using technologies other than interconnected VoIP, including toll service that employs Internet Protocol but that is not provided on an interconnected VoIP basis.[57]

[56] *See 2006 Contribution Methodology Reform Order*, 21 FCC Rcd at 7534, para. 29.

[57] *See Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361, Order, 19 FCC Rcd 7457 (2004) (*AT&T IP-in-the-Middle Order*).

Line 414.2	Separately billed revenue for ordinary long distance provided to end users using interconnected VoIP.

Line 312 (Carrier's Carrier) Long Distance Private Line Services
Line 415 (End User)

Long distance private line service should include:

- Revenues from dedicated circuits, private switching arrangements, and/or predefined transmission paths, extending beyond the basic service area.
- Frame relay and similar services where the customer is provided a dedicated amount of capacity between points in different basic service areas.
- Revenues from the resale of business data services if they are included as part of a toll private line service.

For international private line services, U.S. providers must report on Line 415 revenues from the U.S. portion of the circuit to the theoretical midpoint of the circuit regardless of whether such revenues were billed to the customer by the reporting carrier or by a partner carrier in a foreign point.

Line 313 (Carrier's carrier) Satellite Services
Line 416 (End User)

Include:

- Revenues from providing space segment service and earth station link-up capacity used for providing telecommunications or telecommunications services via satellite.

Do not include:

- Revenues derived from the lease of bare transponder capacity.

Line 314 (Carrier's carrier) All Other Long Distance Services
Line 417 (End User)

Include:

- All other revenues from providing long distance communications services.
- Toll teleconferencing.[58]
- Switched data, frame relay and similar services where the customer is provided a toll network service rather than dedicated capacity between two points.

[58] Audio bridging service providers should report all audio bridging revenues as telecommunications revenues. *See Intercall Order*, 23 FCC Rcd at 10734, 10739, paras. 8, 25 - 26.

e. Other revenue categories

Line 403	Surcharges or other amounts on bills identified as recovering State or Federal universal service contributions

Itemized charges levied by the filer in order to recover contributions to state and federal universal service support mechanisms should be classified as end-user billed revenues and should be reported on Line 403.

- Any charge identified on a bill as recovering contributions to universal service support mechanisms must be shown on Line 403 and should be identified as either interstate or international revenues, as appropriate. Amounts billed to customers to recover federal universal service contribution obligations should be attributed as either interstate or international revenues, as appropriate, but may not be reported as intrastate revenues.
- Filers should report intrastate revenues on line 403 only to the extent that actual payments to state universal service programs were recovered by pass-through charges itemized on customer bills.

Line 418	Other revenues that should not be reported in the contribution bases Non-interconnected VoIP revenues (TRS only)

Line 418 should include all non-telecommunications service revenues on the filer's books, as well as some revenues that are derived from telecommunications-related functions, but that should not be included in the universal service or other fund contribution bases. Line 418.4 should include non-interconnected VoIP revenues, which are included in the TRS contribution base only.

Line 418 includes:

- Information services.
    - Information services offering a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications are not included in the universal service or other fund contribution bases. Information services do not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service. For example, voice mail, call moderation, and call transcription services are information services. Revenues allocated to these services should be reported on Line 418.
- Revenues for the provision of broadband transmission offered on a non-common-carrier basis to providers of broadband Internet access
- Revenues for the provision of broadband Internet access
- Published directory services
- Billing and collection services
- Inside wiring
- Inside wiring maintenance insurance
- Pole attachments
- Open video systems (OVS)
- Cable leased access
- Cable service

- Direct broadcast satellite (DBS) service
- Revenues from the sale, lease, installation, maintenance, or insurance of customer premises equipment (CPE)
- Revenues from the sale or lease of transmission facilities, such as dark fiber or bare transponder capacity, that are not provided as part of a telecommunications service or as a UNE.
- Late payment charges
- Charges imposed by the filer for customer checks returned for non-payment
- Revenues from telecommunications provided in a foreign country where the traffic does not transit the United States or where the provider is offering service as a foreign carrier, i.e., a carrier licensed in that country.

Revenue reported on Line 418 should be divided into four categories:

Line 418.1	Revenues from other non-telecommunications goods or services that are bundled with U.S. wireline or wireless circuit switched exchange access services.
Line 418.2	Revenues from other non-telecommunications goods or services that are bundled with U.S. interconnected VoIP service.
Line 418.3	All other revenues properly reported on line 418 except those reported in Lines 418.1, 418.2, and 418.4, including broadband Internet access service subject to forbearance and broadband transmission service provided on a non-common carrier basis to a broadband Internet access provider.
Line 418.4	Revenues from non-interconnected VoIP services sold to end users that are not otherwise includable on Lines 403 to 417. Non-interconnected VoIP service is defined in Appendix B, under non-interconnected VoIP service provider.[59]

f. Reporting revenues from bundled offerings

Allocation of revenues between either wireline or interconnected VoIP telecommunications and bundled non-telecommunications, such as information services and consumer premises equipment (CPE), are governed by the Commission's bundling rules.

The Commission adopted two safe harbor methods for allocating revenue when telecommunications services and CPE/enhanced services are offered as a bundled package.

[59] For TRS purposes, "providers of non-interconnected VoIP services that are offered with other (non-VoIP) services that generate end-user revenues [are required] to allocate a portion of those end-user revenues to the non-interconnected VoIP service in two circumstances: (1) when those providers also offer the non-interconnected VoIP service on a stand-alone basis for a fee; or (2) when those providers also offer the other (non-VoIP) services without the non-interconnected VoIP service feature at a different (discounted) price." *See 2011 TRS Contributions Order*, 26 FCC Rcd at 14538-39, para. 15. For example, a video gaming service may integrate chat functions that utilize non-interconnected VoIP services, but use of such functions may not be readily identifiable or separable from the gaming service components. *Id.* at 14538-41, paras. 15-17.

- The first option is to report revenues from bundled telecommunications and CPE/enhanced service offerings based on the unbundled service offering prices, with no discount from the bundled offering being allocated to telecommunications services.
- Alternatively, filers may elect to treat all bundled revenues as telecommunications service revenues for purposes of determining their universal service obligations.

Filers may choose to use allocation methods other than the two described above. Filers should realize, however, that any other allocation method may not be considered reasonable and will be evaluated on a case-by-case basis in an audit or enforcement context.

Prepaid calling card providers may avail themselves of the bundled service safe harbors for separating revenue between telecommunications and information services.[60]

Similarly, providers of non-interconnected VoIP services that are offered with end-user revenue generating (non-VoIP) services may avail themselves of the bundled service safe harbors for allocating revenue.[61]

g. Notes for carriers that use the USOA

The revenue accounts in the USOA generally correspond to specific revenue lines in Block 3 and Block 4.

- For example, revenue amounts recorded in accounts 5001, 5002, 5050, 5060 and 5069 should be reported on Line 303 or Line 404, as appropriate.
- Similarly, revenues recorded in account 5280 should be reported on Line 407.

There are some exceptions.

- For example, local exchange carrier revenues from mobile carriers for calls between wireless and wireline customers should be reported on Line 304.
- Monthly and connection revenues from mobile services provided to end users in account 5004 should be reported on Line 409.
- Per-minute revenues from end users in account 5004 should be reported on Line 410. However, revenues in account 5004 from exchanging traffic with mobile service carriers should be reported on Line 304.
- Similarly, state per-minute access revenues recorded in account 5084 should be reported on Line 304; state special access revenues recorded in account 5084 should be reported on Line 305 and Line 406, as appropriate; and state subscriber line charge revenues recorded in account 5084 should be reported on Line 405.
- Uncollectible revenue recorded in account 5300 should be reported on Line 421. The portion of these revenues that correspond to contribution base revenues should be reported on Line 422.

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[60] *Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as Amended; 1998 Biennial Regulatory Review—Review of Customer Premises Equipment and Enhanced Services Unbundling Rules in the Interexchange, Exchange Access and Local Exchange Markets*, CC Docket Nos. 96-61, 98-183, Report and Order, 16 FCC Rcd 7418, 7446–48, paras. 47–54 (2001); *see Regulation of Prepaid Calling Card Services*, WC Docket No. 05-68, Declaratory Ruling, Report and Order, 21 FCC Rcd 7290, 7298, para. 22 (2006) (*Prepaid Calling Card Services Order*), *vacated in part*, *Qwest Servs. Corp. v. FCC*, 509 F.3d 531 (D.C. Cir. 2007).

[61] *See 2011 TRS Contributions Order*, 26 FCC Rcd at 14538-41, paras. 15-17.

Revenues classified in account 5200, miscellaneous revenues, should be divided into several lines for reporting purposes.

- For example, account 5200 includes revenues derived from unbundled network elements, which should be reported on Line 303 and, reciprocal compensation, which should be reported on Line 304.
- Some types of incidental regulated revenues contained in account 5200, miscellaneous revenues, will continue to be reported on Lines 403 through 408. These include collection overages and non-refundable prepaid amounts that are not used by the customer.
- Note that late payment charges, bad check penalties imposed by the company, enhanced services, billing and collection, customer premises equipment sale, lease or insurance, and published directory revenues should continue to be reported on Line 418.

Revenues recorded in account 5100, long distance network service revenues, should be reported on Line 310 through Line 314 and Line 411 through Line 417, as appropriate.

Revenues from account 5100, long distance message revenues, are normally revenues from ordinary long distance and other switched toll services and should be reported on Lines 311, 414.1, and 414.2 except for amounts properly reported on Lines 310, 407, 411, 412, and 413.

4. ATTRIBUTING REVENUES FROM CONTRIBUTING RESELLERS AND FROM END USERS

Filers must report revenues using two broad categories: (1) revenues reported in Block 3 (revenues from contributing resellers, intercarrier compensation, and universal service support) and (2) revenues reported in Block 4 (revenues from all other sources). Taken together, these revenues should include all revenues billed to customers and should include all revenues on the filers' books of account.

Except as noted below, most categories of revenues require the filer to determine whether the customer purchasing the telecommunications is a contributing reseller or instead an end user.[62] Revenues from services provided by underlying carriers to other entities that meet the definition of "reseller" (*see* below) are referred to herein as "carrier's carrier revenues" or "revenues from resellers." Revenues from all other sources consist primarily of revenues from services provided to end users, referred to here as "end-user revenues." This latter category includes foreign and non-telecommunications revenues.

a. Definition of "Reseller"

For purposes of completing Block 3, a "reseller" is a telecommunications carrier or telecommunications provider that: (1) incorporates purchased telecommunications into its own offerings; *and* (2) can reasonably be expected to contribute to federal universal service support mechanisms based on revenues from those offerings.[63] Specifically, a customer is a reseller if it incorporates purchased wholesale service

[62] *See 2012 Wholesaler-Reseller Clarification Order*, 27 FCC Rcd at 13786-87, para. 12; *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.; Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45, 97-21, Report and Order and Second Order on Reconsideration, 12 FCC Rcd 18400, 18507 (1997) ("For this purpose, a reseller is a telecommunications service provider that 1) incorporates purchased telecommunications services into its own offerings and 2) can reasonably be expected to contribute to support universal service based on revenues from those offerings"); *Federal-State Joint Board on Universal Service; Request for Review of Decision of the Universal Service Administrator by Global Crossing Bandwidth, Inc.,* CC Docket No. 96-45*,* Order, 24 FCC Rcd 10824, 10825-26, para. 5 (Wireline Comp. Bur. 2009) (*Global Crossing Order*).

[63] *2012 Wholesaler-Reseller Clarification Order*, 27 FCC Rcd at 13781-82, para.3.

into an offering that is, at least in part, assessable telecommunications and can be reasonably expected to contribute to the federal universal service support mechanisms for that portion of the offering.[64]

b. Revenues from Entities Exempt from USF Contributions

For the purposes of filling out this Worksheet—and for calculating contributions to the universal service support mechanisms—certain telecommunications carriers and other providers of telecommunications may be exempt from contribution to the universal service support mechanisms.

- These exempt entities, including "international only" and "intrastate only" providers and providers that meet the *de minimis* universal service threshold, should not be treated as contributing resellers for the purpose of reporting revenues in Block 3.
- That is, filers that are underlying carriers should report revenues derived from the provision of telecommunications to exempt carriers and providers (including services provided to entities that are *de minimis* for universal service purposes) on Lines 403–417 of Block 4 of the Telecommunications Reporting Worksheet, as appropriate.
    - Underlying carriers must contribute to the universal service support mechanisms on the basis of such revenues.
    - In Block 5, Line 511, however, filers may elect to report the amounts of such revenues (i.e., those revenues from exempt entities that are reported as end-user revenues) so that these revenues may be excluded for purposes of calculating contributions to TRS, LNPA, and NANPA.

c. "Reasonable Expectation" Standard

Pursuant to the *2012 Wholesaler-Reseller Clarification Order*, a filer may demonstrate that it has a "reasonable expectation" that a customer contributes to federal universal service support mechanisms based on revenues from the customer's offerings by following the guidance in these instructions or by submitting other reliable proof.[65]

Filers that comply with the procedures specified in this section of the instructions will be afforded a "safe harbor"- *i.e.,* that filer will be deemed to have demonstrated a reasonable expectation. If a wholesale provider follows procedures that deviate in any way from the guidance in this section, the wholesale provider will have to demonstrate a reasonable expectation via "other reliable proof."[66] USAC shall evaluate the use of "other reliable proof" to demonstrate a "reasonable expectation" on a case-by-case basis, based on the reasonableness of the utilized method or proof.[67]

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[64] Thus, for example, if a customer purchases a DSl line and incorporates that service into an offering of both telephone service and broadband Internet access service, it may certify that it is a reseller for purposes of that purchased service so long as it contributes on the assessable revenues from the telephone service. *See id.* at 13796, para. 34 n.98.

[65] *2012 Wholesaler-Reseller Clarification Order,* 27 FCC Rcd at 13794, para. 32, and 13801-02, paras. 51-52; *see Global Crossing Order*, 24 FCC Rcd at 1028-29, para. 14.

[66] *See id.* at 13801-02, paras. 51-52.

[67] This requirement is further discussed in the *2012 Wholesaler-Reseller Clarification Order,* 27 FCC Rcd at 13801-2, para. 52.

Filers that do not comply with the safe harbor procedures or that do not otherwise meet the reasonable expectation standard will be responsible for any additional universal service assessments that result if their revenues must be reclassified as end user revenues.[68]

d. Safe Harbor Procedures for Meeting the "Reasonable Expectation."

Each filer should have documented procedures to ensure that it reports as "revenues from resellers" only revenues from entities that meet the definition of reseller. The procedures must include, at a minimum, the following information on resellers:

1. Filer 499 ID;
2. Legal name;
3. Legal address;
4. Name of a contact person;
5. Phone number of the contact person; and,
6. As described below, an annual certification by the reseller regarding its reseller status;

Filers shall provide this information to the Commission or the Administrator upon request.

e. Certifications

Annual Certificates. A filer may demonstrate that it had and has a reasonable expectation that a particular customer is a reseller with respect to purchased service(s) by providing a certificate signed each calendar year by the customer that:

> (1) specifies which services the customer is or is not purchasing for resale pursuant to the certificate;[69] and
>
> (2) is consistent with the following sample language:
>
> *I certify under penalty of perjury that the company is purchasing service(s) for resale, at least in part, and that the company is incorporating the purchased services into its own offerings which are, at least in part, assessable U.S. telecommunications or interconnected Voice over Internet Protocol services. I also certify under penalty of perjury that the company either directly contributes or has a reasonable expectation that*

[68] If a wholesale provider's customer (or another entity in the downstream chain of resellers) actually contributed to the federal universal service support mechanisms for the relevant calendar year on offerings that incorporate purchased wholesale services, the wholesale provider will not be obligated to contribute on revenues for the wholesale services, even if the wholesale provider cannot demonstrate that it had a reasonable expectation that its customer would contribute when it filed its FCC Form 499-A for the relevant calendar year. *Id.* at 13799, paras. 43-44.

[69] At the filer's discretion, the filer may, for example, rely on certificates that specify any of the following: (1) that all services purchased by the customer are or will be purchased for resale pursuant to the certificate ("entity-level certification"); (2) that all services associated with a particular billing account, the account number for which the customer shall specify, are or will be purchased for resale pursuant to the certificate ("account-level certification"); (3) that individual services specified by the customer are or will be purchased for resale pursuant to certification ("service-specific certification"); or (4) that all services except those specified either individually or as associated with a particular billing account, the account number(s) for which the customer shall specify, are or will be purchased for resale pursuant to the certificate. A customer may certify that additional services will be purchased for resale pursuant to the certificate if the customer (or another entity in the downstream chain of resellers) will contribute to the federal universal service support mechanisms on revenues attributed to such services for the relevant calendar year.

> *another entity in the downstream chain of resellers directly contributes to the federal universal service support mechanisms on the assessable portion of revenues from offerings that incorporate the purchased services*.[70]

Services Purchased After Date of Annual Certificate. A filer may sell additional service(s) to a customer after the date that the annual certificate is signed. If the annual certificate does not cover those additional services, the filer may demonstrate a reasonable expectation that a customer is a reseller with respect to a service purchased after the date of the annual certificate signed by the customer by relying on either of these received prior to the filing of the applicable FCC Form 499-A:

> (1) a verifiable notification from the customer that the customer is purchasing the service for resale consistent with the valid, previously signed annual certificate, or
>
> (2) a subsequent certificate covering the purchased service signed by the customer.

5. ALLOCATING REVENUES BETWEEN THE JURISDICTIONS

Columns (b), (c), (d), and (e) are provided to identify the part of gross revenues that arise from interstate and international services for each entry on Lines 303 through 314 and Lines 403 through 417.

a. Definitions

Intrastate telecommunications means: communications or transmission between points within the same State, Territory, or possession of the United States, or the District of Columbia.

Interstate and international telecommunications means: communications or transmission between a point in one state, territory, possession of the United States or the District of Columbia and a point outside that state, territory, possession of the United States or the District of Columbia.

b. General Requirements

Where possible, filers should report their amount of total revenues that are intrastate, interstate, and international by using information from their books of account and other internal data reporting systems.

- Where a filer can determine the precise amount of revenues that it has billed for interstate and international services, it should enter those amounts in columns (d) and (e), respectively.
    - Total revenues entered in column (a) include revenues billed for intrastate service even though intrastate revenues are not reported separately on the FCC Form 499-A.
- If the allocation of revenues cannot be determined directly from corporate books of account or subsidiary records, filers may provide on the Worksheet good-faith estimates of these figures.
    - In such cases, the filer should enter the good-faith estimates of the percentage of interstate and the percentage of international revenues in columns (b) and (c), respectively. Using the good-faith estimate, calculate the amount of interstate revenues as the amount in column (a) times the percentage in column (b), and calculate the amount of international revenues as the amount in column (a) times the percentage in column (c). Enter zero dollars in columns (d) and (e) if and only if there were no interstate or international revenues for the line for the reporting period.

[70] In some instances, reselling carriers are themselves selling the underlying service to another (non-contributing) reseller, which then sells the same service to another (non-contributing) reseller, and so on until the service is ultimately sold to an entity that is a contributing "reseller." In these instances, an underlying carrier also may include as carrier's carrier revenue any revenues received from service ultimately provided to entities that meet the definition of "reseller" for purposes of the FCC Form 499-A.

- A reporting entity may not submit a good-faith estimate lower than one percent unless the correct figure should be $0.
- Good-faith estimates must be based on information that is current for the filing period.
- Information supporting good-faith estimates must be made available to either the FCC or to the administrators upon request.

For example, if a prepaid calling card provider collects a fixed amount of revenue per minute of traffic, and 65 percent of minutes are interstate, then interstate revenues would include 65 percent of the per-minute revenues. Similarly, if a local exchange carrier bills local measured service charges for calls that originate in one state and terminate in another, these billings should be classified as interstate even though the charges are covered by a state tariff and the revenues are included in a local service account.

c. Services Offered Under Interstate Tariffs

Revenues from services offered under interstate tariffs, such as revenues from federal subscriber line charges and from federally tariffed LNP surcharges, should be identified as interstate revenues. This includes amounts incorporated in or bundled with other local service charges.

d. Flat-rate Unbundled Network Access Elements

In general, flat-rated unbundled network access elements should be classified according to the regulatory agency that has primary jurisdiction over the contracts.

e. Mixed-Use Private or WATS Lines

If over ten percent of the traffic carried over a private or WATS line is interstate, then the revenues and costs generated by the entire line are classified as interstate.[71]

f. Bundled Local and Toll Services

Many carriers and other providers of telecommunications now offer packages that bundle fixed local exchange service with interstate toll service (*i.e.*, voice long distance) for a single price.

- Revenues for the whole bundle, except for tariffed subscriber line, ARC and PICC charges, should be reported on Line 404, as described more fully above.
- The portion of revenues associated with interstate and international toll services must be identified in columns (d) and (e), respectively.[72]
- Filers should make a good-faith estimate of the amounts of intrastate, interstate, and international revenues from bundled local/toll service if they cannot otherwise determine these amounts from corporate records, and must make their methodology available to the Commission or the Administrator, upon request.

g. Safe Harbors

Wireless telecommunications providers, interconnected VoIP providers, and non-interconnected VoIP providers that choose to avail themselves of safe harbor percentages for interstate revenues may assume that the FCC will not find it necessary to review or question the data underlying their reported percentages.

Wireless Safe Harbor: The FCC provides the following safe harbor percentages of interstate revenues associated with Line 309, Line 409, and Line 410:[73]

[71] *See Universal Service Order*, 12 FCC Rcd at 9173, para. 778 (citing 47 CFR § 36.154(a)).

[72] *See Separately Stated Toll Order,* 23 FCC Rcd at 1414, para. 5 (defining "toll service").

37.1% of cellular and broadband PCS telecommunications revenues
12.0% of paging revenues
1.0% of analog SMR dispatch revenues

These safe harbor percentages may not be applied to universal service pass-through charges, fixed local service revenues, or toll-service charges. All filers must report the actual amount of interstate and international revenues for these services. For example, toll charges for itemized calls appearing on mobile telephone customer bills should be reported as intrastate, interstate or international based on the origination and termination points of the calls.

Interconnected and Non-Interconnected VoIP Safe Harbor: The FCC provides the following safe harbor percentage of interstate revenues associated with Line 303.2, Line 404.4, Line 404.5, Line 414.2, and Line 418.4:

64.9% of interconnected VoIP and non-interconnected VoIP telecommunications revenues[74]

These safe harbor percentages may not be applied to universal service pass-through charges or other fixed local service revenues.

Single Election for Affiliated Entities: All affiliated wireless telecommunications providers and VoIP providers (including interconnected and non-interconnected) must make a single election, each quarter, whether to report actual revenues or to use the current safe harbor within the same safe harbor category.[75]

- So, for example, if in a calendar quarter a wireless telecommunications provider reports actual interstate revenues for its cellular and broadband PCS telecommunications services, all of its affiliated legal entities must also report actual interstate telecommunications revenues for cellular and broadband PCS offerings.
- The same wireless telecommunications provider and all affiliates, however, could use the safe harbor for paging services.

Same Methodology for the FCC Form 499-A and the FCC Form 499-Q: Filers should use the same methodology (traffic study or safe harbor) to report interstate and international jurisdictions on the FCC Form 499-A as used on the FCC Form 499-Qs to forecast revenue in each quarter of the applicable calendar year.

- For example, if a filer projected revenue based on a safe harbor for the first two quarters and based on traffic studies for the final two quarters, the amounts reported in the FCC Form 499-A for the first two quarters would be based on actual billings for those quarters and the relevant safe

(Continued from previous page)

[73] *See 2006 Contribution Methodology Reform Order*, 21 FCC Rcd at 7532–33, 7545–46, paras. 25–27, 53–55; *Federal-State Joint Board on Universal Service et al.*, CC Docket No. 96-45 *et al.*, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952 (2002) (*2002 Second Contribution Methodology Order and FNPRM*); *see also Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 21252, 21258–60, paras. 11-15 (1998).

[74] *2006 Contribution Methodology Reform Order*, 21 FCC Rcd at 7545, para. 53.

[75] *See Federal-State Joint Board on Universal Service et al.*, CC Docket No. 96-45 *et al.*, Order and Order on Reconsideration, 18 FCC Rcd 1421, 1424-25, para. 6 (2003) ("wireless telecommunications providers are 'affiliated' for purposes of making the single election whether to report actual interstate telecommunications revenues or use the applicable interim wireless safe harbor if one entity (1) directly or indirectly controls or has the power to control another, (2) is directly or indirectly controlled by another, (3) is directly or indirectly controlled by a third party or parties that also controls or has the power to control another, or (4) has an 'identity of interest' with another contributor"). *See also* 47 CFR § 1.2110(c)(5).

harbors, and the amounts reported for the final two quarters would be based on actual billings for those quarters and the traffic studies for those quarters.

Filers Not Required to File an FCC Form 499-Q: For filers who were not required to file the FCC Form 499-Q, the interstate and international jurisdictions reported on the FCC Form 499-A must be based on information that is current for the filing period.

h. Traffic Studies

Wireless telecommunications providers, interconnected VoIP providers, and non-interconnected VoIP providers may rely on traffic studies if they are unable to determine their actual interstate and international revenues.[76]

- In developing their traffic studies, such providers may rely on statistical sampling to estimate the proportion of minutes that are interstate and international.
- Any revenues associated with charges on customer bills that are identified as interstate or international must effectively be accounted for (e.g., through proper weighting in a traffic study) as 100 percent interstate or international when reporting revenues.[77]
- Sampling techniques must be designed to produce a margin of error of no more than one percent with a confidence level of 95%. If the sampling technique does not employ a completely random sample (e.g., if stratified samples are used), then the respondent must document the sampling technique and explain why it does not result in a biased sample.
- Traffic studies should include, at a minimum: (1) an explanation of the sampling and estimation methods employed and (2) an explanation as to why the study results in an unbiased estimate with the accuracy specified above.
- Mobile telecommunications providers, interconnected VoIP providers and non-interconnected VoIP providers should retain all data underlying their traffic studies as well as all documentation necessary to facilitate an audit of the study data and be prepared to make this data and documentation available to the Commission upon request.
- In addition, filers that rely on traffic studies must submit those studies to USAC (*see* Table 3 for filing instructions – including address for filing traffic studies, and filing deadlines). To enable USAC to match traffic studies filed by contributors with their FCC Form 499 filings, include the following identifying information at the top of each page of the traffic study: Filer ID; Company Name; Affiliated Filers Name (where applicable).

D. BLOCK 4-B: TOTAL REVENUE AND UNCOLLECTIBLE REVENUE INFORMATION

The Administrator relies on the detail line information on the Worksheet to arrive at the totals shown in Block 4-B. The Administrator will attempt to resolve conflicts between any sums that differ from the information entered into the totals on Block 4-B.

Line 419	Gross Billed Revenues from All Sources

[76] *See 2006 Contribution Methodology Reform Order*, 21 FCC Rcd at 7534–36, 7547, paras. 29–33, 57; *2011 TRS Contributions Order*, 26 FCC Rcd at 14544, para. 25.

[77] *See Separately Stated Toll Order*, 23 FCC Rcd at 1418, para. 15. In developing traffic studies, toll service traffic must be identified and treated in a manner that recognizes that such traffic is more likely to be interstate or international than intrastate. *See id*. Additionally, appropriate weighting of the higher revenue that is often associated with toll service must be reflected in the traffic study or studies. *See id*.

Gross billed revenues from all sources should equal the sum of revenues by type of service reported on Lines 303 through 314 and Lines 403 through 418.

Line 420	Gross Universal Service Contribution Base Amounts

Universal service contribution base revenues should equal the subtotal of Lines 403 through 411 and Lines 413 through 417 for each column. The totals on this line represent gross end-user revenues for the purpose of determining contributions to universal service support mechanisms. *See* section IV.E (Line 511 instructions).

Line 421	Uncollectible revenue/ bad debt associated with Line 419 (Gross Billed Revenues)

Show the uncollectible revenue/bad debt expense associated with gross billed revenues amounts reported on Line 419.

- For those using billed revenues, this line may include redeemed credits.
- Reported uncollectible amounts should:
    - Be the amount reported as bad debt expense in the filer's income statement for the year.
    - Cover uncollectibles associated with all revenue on the filer's books (Line 419), including uncollectible carrier's carrier revenues, end-user telecommunications revenues, and revenues reported on Line 418.
    - Be calculated in accordance with Generally Accepted Accounting Principles. Thus, uncollectibles should represent the portion of gross billed revenues that the filer reasonably expects will not be collected.
- Uncollectibles may not include any amounts associated with unbillable revenues.[78]
- Filers that operate on a cash basis should report $0 on this line.
- Filers that used earned revenue to represent billed revenues should not report as uncollectible any billings that are not included in earned revenues.

Filers that maintain separate detail of uncollectibles by type of business should rely on those records in dividing uncollectible expense between carrier's carrier, contribution base and other revenues, and for dividing uncollectibles associated with contribution base revenues between intrastate, interstate and international categories. Filers that do not have such detail should make such assignments in proportion to reported gross revenues.

Line 422	Uncollectible revenue/ bad debt associated with Line 420 (Universal Service Contribution Base Amounts)

Show the portion of the uncollectible revenue/bad debt expense reported on Line 421 that is associated with just the universal service contribution base amounts reported on Line 420.

- Filers that maintain separate detail of uncollectibles by type of business should rely on those records in determining the portion of gross uncollectibles reported on Line 421 that should be reported on Line 422.

[78] *See 2002 Second Contribution Methodology Order and FNPRM*, 17 FCC Rcd at 24970 n.95.

- Filers that do not have such detail should make such assignments in proportion to reported gross revenues.
- Filers must be able to document how the amounts reported on Line 422 relate to the uncollectible revenue/bad debt expense associated with gross billed revenues reported on Line 421.

In exceptional circumstances, amounts reported on Line 422 may exceed amounts reported on Line 421 or either amount might actually be negative. These situations can arise where amounts previously written off as uncollectible subsequently are collected.

Filers that maintain separate detail of uncollectibles by type of business should rely on those records in dividing uncollectible expense between carrier's carrier, contribution base and other revenues, and for dividing uncollectibles associated with contribution base revenues between intrastate, interstate and international categories. Filers that do not have such detail should make such assignments in proportion to reported gross revenues.

Line 423	**Net universal service contribution base revenues**

Net universal service contribution base revenues should equal the amounts reported on Line 420 minus the amounts reported on Line 422.

E. BLOCK 5: ADDITIONAL REVENUE BREAKOUTS FOR NON-USF MECHANISMS

Line 501	**Filer 499 ID**

Enter the Filer 499 ID from Line 101.

Line 502	**Legal Name of Filer**

Enter the legal name of the filer from Line 102.

Line 503-510	**Percentages of Telecommunications Revenues by LNPA Region**

In these lines, filers should identify the percentages of their telecommunications revenues by LNPA region.

- Payphone service providers, private service providers, and shared-tenant service providers that have certified that they are exempt from contributing to the shared costs of LNP need not provide these breakdowns.

Carriers and interconnected VoIP providers should calculate or estimate the percentage of revenues that they billed in each region based on the amount of service they actually provided in the parts of the United States listed for each region.

- Customer billing addresses may be used to calculate or estimate this percentage.
- The percentages in column (a), representing Block 3 revenues billed in each region of the country, should add to 100% unless the filer did not provide any services for resale by other contributors to the federal universal service support mechanisms.
- The percentages in column (b), representing Block 4 telecommunications service revenues billed in each region of the country (excluding non-telecommunications revenues reported on Line 418) should add to 100% unless the filer did not provide any telecommunications services to end users or non-contributing carriers.
    - Carriers do not need to complete column (a) if they have some end-user revenues in each of the regions in which they have carrier operations.

- Filers may use a proxy based on the percentage of subscribers a provider serves in a particular region for reaching an estimate for allocating their end-user revenues to the appropriate regional LNPA.

Line 511	Revenues from Resellers that Do Not Contribute to Universal Service Support Mechanisms and Are Included in Block 4

Identify revenues from resellers that do not contribute to universal service support mechanisms and that are included in Block 4. Revenues from resellers that do not contribute to universal service support mechanisms are included on Line 420 but may be excluded from a filer's TRS, NANPA, LNP, and FCC interstate telephone service provider regulatory fee contribution bases. To have these amounts excluded, the filer has the option of identifying such revenues on Line 511.

Line 420 may contain revenues from some FCC Form 499 filers that are exempt from contributing directly to universal service support mechanisms. For example, these would include filers that meet the universal service *de minimis* exception or that provide "international only" service. Since these universal service exempt entities generally do contribute directly to the TRS, LNP, and NANPA mechanisms, revenues from these entities need not be included in the underlying service provider contribution bases for those mechanisms. Filers choosing to report revenues on Line 511 must have the FCC Filer 499 ID for each customer whose revenues are so reported.

Line 512	Gross TRS Contribution Base Amounts

TRS contribution base revenues reportable on Line 512(a) should equal the subtotal of Lines 403(a) through 417(a) and Line 418.4(a) less Line 511(a).

TRS contribution base revenues reportable on Line 512(b) should equal the subtotal of Lines 403(d) through 417(d), Lines 403(e) through 417(e), Line 418.4(d), and Line 418.4(e) less Line 511(b). The totals on this line represent gross end-user revenues for the purpose of determining contributions to TRS.

Line 513	Uncollectible Revenue/ Bad Debt Expense Associated with TRS Contribution Base Amounts

Show the portion of the uncollectible revenue/bad debt expense reported on Line 421 that is associated with just the TRS contribution base amounts reported on Line 512.

- Filers that maintain separate detail of uncollectibles by type of business should rely on those records in determining the portion of gross uncollectibles reported on Line 421 that should be reported on Line 513.
- Filers that do not have such detail should make such assignments in proportion to reported gross revenues.

Filers must be able to document how the amounts reported on Line 513 relate to the uncollectible revenue/bad debt expense associated with gross billed revenues reported on Line 421.

- In exceptional circumstances, amounts reported on Line 513 may exceed amounts reported on Line 421 or either amount might actually be negative. These situations can arise where amounts previously written off as uncollectible subsequently are collected.

Line 514	Net TRS Contribution Base Revenues

Net TRS contribution base revenues should equal the amounts reported on Line 512 less the amounts reported on Line 513.

F. BLOCK 6: CERTIFICATION

Line 601	Filer 499 ID

Copy the Filer 499 ID from Line 101.

Line 602	Legal Name of Filer

Copy the legal name of the filer from Line 102.

Line 603	Certifications – Exemptions from Contribution Requirement(s)

In this line, filers may certify that they are exempt from one or more contribution requirement(s) by checking the box next to the mechanism(s) from which they are exempt.

- As explained above, the FCC Form 499 Telecommunications Reporting Worksheet enables telecommunications carriers and service providers to satisfy a number of requirements in one consolidated form.
- Not all entities that file the Telecommunications Reporting Worksheet must contribute to all of the support and cost-recovery mechanisms (universal service, LNP, TRS, and NANPA). For example, certain telecommunications providers that are not telecommunications carriers must contribute to the universal service support mechanisms, but not to the TRS, LNP, and NANPA mechanisms.
- Section III.A provides summary information on which filers must contribute and which filers are exempt from particular contribution requirements.

Filers that certify that they are exempt from one or more mechanism(s) should use the space provided on Line 603 to explain the exemption.

Note: It is not necessary for a filer to certify that it is *de minimis* for universal service purposes because the universal service administrator can determine whether a filer meets the contribution threshold from other information provided on the form. If, however, a reseller or other provider of telecommunications qualifies for the *de minimis* exemption, it must notify its underlying carriers that it is not contributing directly to universal service, so that it may be treated as an end user when the underlying carriers file an FCC Form 499.

Line 604	Regulatory Fee Exemptions

In this line, filers indicate whether they are exempt from FCC regulatory fees or the filer is an "exempt telecommunications company."[79]

- A state or local governmental entity is any state, possession, city, county, town, village, municipal corporation, or similar political organization.[80]
- The second check box identifies organizations duly qualified as a nonprofit, tax exempt entity under section 501 of the Internal Revenue Code, 26 U.S.C. § 501 or by state certification.[81] These organizations typically qualify for non-profit status under sections 501(c)(3) or 501(c)(12).

[79] 47 CFR § 1.1162(c). The FCC will presume that otherwise exempt carriers prefer to pay FCC regulatory fees unless they check this box.

[80] 47 CFR § 1.1162(b).

[81] 47 CFR § 1.1162(c).

Note that such entities are not exempt from universal service, TRS, LNP, or NANPA contributions unless they qualify under some other exemption.

Line 605	Request for Nondisclosure of Revenue Information

Filers may use the box in Line 605 to request nondisclosure of the revenue information contained on the Telecommunications Reporting Worksheet.

- By checking this box, the officer of the company signing the Worksheet certifies that the information contained on the Worksheet is privileged or confidential commercial or financial information and that disclosure of such information would likely cause substantial harm to the competitive position of the company filing the Worksheet.
- This box may be checked in lieu of submitting a separate request for confidentiality pursuant to section 0.459 of the Commission's rules.[82]

All decisions regarding disclosure of company-specific information will be made by the Commission. The Commission regularly makes publicly available the names (and Block 1 and 2-B contact information) of the entities that file the Telecommunications Reporting Worksheet and information on which filers contribute to which funding mechanisms, including entities that checked the boxes in Line 603.

Line 606-611	Officer Certification

An officer of the filer must examine the data provided in the Telecommunications Reporting Worksheet and certify that the information provided therein is accurate and complete.

- Officers of entities making consolidated filings should refer to Section III.B and must certify that they comply with the conditions listed in that section.
- An officer is a person who occupies a position specified in the corporate by-laws (or partnership agreement), and would typically be president, vice president for operations, vice president for finance, comptroller, treasurer, or a comparable position. If the filer is a sole proprietorship, the owner must sign the certification.

Capable filers must enter data, and verify, submit, and certify FCC Forms 499-A and 499-Q online via USAC's web-based data entry system, E-File.

- An electronic signature in the signature block of each form certified by that officer will be considered the equivalent to a handwritten signature on the form.
- By entering his or her electronic signature into the signature block of each form, the officer, therefore, acknowledges that such electronic signature certifies his or her identity and attests under penalty of perjury as to the truth and accuracy of the information contained in each electronically signed form.
- Visit http://www.usac.org/about/tools/e-file.aspx/ for more information and access to the online filing system.

A person who willfully makes false statements on the Worksheet can be punished by fine or imprisonment under Title 18 of the United States Code.[83]

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[82] 47 CFR § 0.459; *see Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, GC Docket No. 96-55, Report and Order, 13 FCC Rcd 24816 (1998) (listing the showings required in a request that information be withheld and stating that the Commission may defer action on such requests until a formal request for public inspection has been made).

[83] *See* 18 U.S.C. § 1001.

Line 612	Type of Filing

Indicate whether this filing is an original filing for the year, due on April 1, a registration filing for a new service provider, a filing with revised registration information, or a filing with revised revenue information. *See* section III.C for information on the obligation to file revisions.

V. CALCULATION OF CONTRIBUTIONS

Filers do not calculate the amounts that they must contribute in this Worksheet. The administrators will use the revenue information on the Worksheet to calculate a funding base and individual contributions for each support mechanism. Individual contributions are determined by the use of "factors"—factors reflect the total funding requirement of a particular mechanism divided by the total contribution base for that mechanism. Information on the contribution bases and individual filer contributions are shown below in Table 4.

Table 4: Contribution Bases

Support Mechanism	Funding Basis
Universal service	Line 423(d) + Line 423(e)* less revenues corresponding to universal service contributions**
TRS (Filers with interstate or international end-user revenues must pay a minimum of $25)	Line 514(b)
NANPA (Filers with end-user revenues must pay a minimum of $25. Filers with no end-user revenues must pay $25.)	Line 420(a) plus Line 412(a) less Line 511(a)
LNPA - by region (Filers with only carrier's carrier revenue in a region must pay $100 for that region)	Line 420(a) plus Line 412(a) less Line 511(a) times percentages on Lines 503 through 509

* Line 423(e) is excluded from the contribution base if the total of amounts on Line 423(d) for the filer consolidated with all affiliates is less than 12% of the total of Line 423(d) + Line 423(e) for the filer consolidated with all affiliates. *See* 47 CFR § 54.706(c).

** The contribution base for an individual filer is the projected collected interstate and international revenues for the quarter, reduced by an imputed amount of universal service support pass-through charges, based on the actual factor for the quarter. *See Contribution Methodology Order*, 17 FCC Rcd 24952; *see, e.g.*, Proposed First Quarter 2004 Universal Service Contribution Factor, CC Docket No. 96-45, Public Notice, 18 FCC Rcd 25111 (2003). *See also* FCC, Contribution Factor & Quarterly Filings - Universal Service Fund (USF) Management Support, https://www.fcc.gov/encyclopedia/contribution-factor-quarterly-filings-universal-service-fund-usf-management-support.

Monthly billings for universal service are based on projected collected revenue information filed on the quarterly FCC Form 499-Q.

- Historical amounts reported on FCC Form 499-Q Line 116(b) and (c) correspond to FCC Form 499-A Line 420(d) and (e), respectively.
- Projected collected revenues on FCC Form 499-Q Line 120(b) and (c) correspond to net universal service base revenues on FCC Form 499-A Line 423(d) and (e), respectively.

- The FCC Form 499-Q provides instructions for projecting revenues, and for removing uncollectible amounts from billed revenue projections.
- The amounts filed on the FCC Form 499-A are used to review and true-up FCC Form 499-Q filings and associated contributions.

VI. ADDITIONAL INFORMATION

A. REMINDERS

- File the FCC Form 499-A online at http://forms.universalservice.org.
- Contributors are required to maintain records and documentation to justify information reported on the Telecommunications Reporting Worksheet for five years. *See* section III.E.
- Is the filer affiliated with another telecommunications provider? Each legal entity must file separately unless they qualify for filing on a consolidated basis. *See* section III.B. Each affiliate or subsidiary must show the same Affiliated Filers information on Lines 106.1 and 106.2.
- Provide data for all lines that apply. Show a zero for services for which the filer had no revenues for the filing period.
- Be sure to include on Line 112 all names by which the filer is known to customers, including the names of agents or billers if those names appear on customer bills.
- Telecommunications providers that are required to contribute to universal service support mechanisms must also file quarterly FCC Forms 499-Q. *See* section III.C.
- Wherever possible, revenue information should be taken from the filer's financial records.
- The Worksheet must be signed by an officer of the filer. An officer is a person who occupies a position specified in the corporate by-laws (or partnership agreement), and would typically be president, vice president for operations, comptroller, treasurer, or a comparable position.
- Do not mail the Worksheet to the FCC. *See* section III.C.
- Filers must re-file parts of the Worksheet if the Agent for Service of Process or FCC Registration information changes during the year.

FCC Form 499 is one of several forms that telecommunications carriers and other providers of interstate telecommunications may need to file. Information concerning common filing requirements for such providers may be found on the Commission's web site, at https://www.fcc.gov/encyclopedia/information-firms-providing-telecommunications-services-0.

B. PAPERWORK REDUCTION ACT NOTICE

Section 52.17 of the Federal Communications Commission's rules require all telecommunications carriers and interconnected VoIP providers to contribute to meet the costs of establishing numbering administration, and directs that contributions shall be calculated and paid in accordance with the FCC Form 499-A or Worksheet. 47 CFR § 52.17. Section 52.32 requires the local number portability administrators shall recover the shared costs of long-term number portability from all telecommunications carriers and interconnected VoIP providers. 47 CFR § 52.32. Sections 54.706, 54.711, and 54.713 require all interstate telecommunications carriers, interconnected VoIP providers, providers that offer interstate telecommunications for a fee on a non-common carrier basis, and payphone providers that are aggregators to contribute to universal service and file this Worksheet once a year and the FCC Form 499-Q four times a year. 47 CFR §§ 54.706, 54.711, 54.713. Section 64.604 requires that every common carrier, interconnected VoIP provider, and non-interconnected VoIP provider contribute to the TRS Fund on the basis of its relative share of interstate end-user revenues that are subject to contributions based on

information provided in this Worksheet. 47 CFR §§ 64.601(b), 64.604(c)(5)(iii)(A) and (B). Section 64.1195 and the Commission's orders require all telecommunications carriers and interconnected VoIP providers to register using the FCC Form 499-A. 47 CFR § 64.1195(a).

This collection of information stems from the Commission's authority under sections 151(i), 225, 251, 254, 258, and 715 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151(i), 225, 251, 254, 258, 616. The data in the Worksheet will be used to calculate contributions to the universal service support mechanisms, the TRS support mechanism, the cost recovery mechanism for numbering administration, and the cost recovery mechanism for shared costs of long-term number portability. Selected information provided in the Worksheet will be made available to the public in a manner consistent with the Commission's rules.

We have estimated that each response to this collection of information will take, on average, 13.5 hours. Our estimate includes the time to read the instructions, look through existing records, gather and maintain the required data, and actually complete and review the form or response. If you have any comments on this estimate, or how we can improve the collection and reduce the burden it causes you, you may write the Federal Communications Commission, AMD-PERM, Washington, D.C. 20554, Paperwork Reduction Project (3060-0855). We also will accept your comments via the Internet if you send them to pra@fcc.gov. DO NOT SEND COMPLETED WORKSHEETS TO THIS ADDRESS.

You are not required to respond to a collection of information sponsored by the federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid Office of Management and Budget (OMB) control number. This collection has been assigned an OMB control number of 3060-0855.

The Commission is authorized under the Communications Act to collect the information we request on this form. We will use the information that you provide to determine contribution amounts. If we believe there may be a violation or potential violation of a statute or a Commission regulation, rule, or order, your Worksheet may be referred to the Federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing the statute, rule, regulation, or order. In certain cases, the information in your Worksheet may be disclosed to the Department of Justice, court, or other adjudicative body when (a) the Commission; or (b) any employee of the Commission; or (c) the United States government, is a party to a proceeding before the body or has an interest in the proceeding.

With the exception of your employer identification number, if you do not provide the information we request on the Worksheet, the Commission may consider you in violation of rules 1.47, 52.17, 52.32, 54.713, 64.604, and 64.1195. 47 CFR §§ 1.47, 52.17, 52.32, 54.713, 64.604, 64.1195.

The foregoing notice is required by the Paperwork Reduction Act of 1995, P.L. No. 104-13, 44 U.S.C. § 3501, *et seq*.

Appendix A

How to determine if a filer meets the universal service *de minimis* standard for 2016

(1)	*Interstate contribution base for filer* Enter Line 423(d) from FCC Form 499-A.	$
(2)	*International contribution base for filer* Enter Line 423(e) from FCC Form 499-A.	$
(3)	*Interstate contribution base for all affiliates** Enter sum of Line 423(d) from FCC Forms 499-A of all affiliates.	$
(4)	*International contribution base for all affiliates* Enter sum of Line 423(e) from FCC Forms 499-A of all affiliates.	$
(5)	*Consolidated interstate contribution base* Enter Line (1) + Line (3).	$
(6)	*Consolidated interstate and international contribution base* Enter Line (2) + Line (4) + Line (5).	$
(7)	*Consolidated interstate contribution base as a percentage of consolidated interstate and international contribution base* Enter Line (5) / Line (6).	%
(8)	*LIRE Exemption *** If Line (7) > 12%, enter Line (2). If Line (7) ≤ 12%, enter $0.	$
(9)	*Contribution base to determine de minimis qualification* Enter Line (1) + Line (8).	$
(10)	*2017 de minimis estimation factor*	0.164 ***
(11)	*Estimated annual contribution* Enter Line (9) x Line (10)	$

* Unless otherwise specifically provided, an affiliate is a "person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person." For this purpose, the term "owns" means to own an equity interest (or the equivalent thereof) of more than 10 percent. *See* 47 U.S.C. § 153(2).

** Line 423(e) is excluded from the contribution base if the total of amounts on Line 423(d) for the filer consolidated with all affiliates is less than 12% of the total of Line 423(d) + Line 423(e) for the filer consolidated with all affiliates. *See* 47 CFR § 54.706(c).

*** The estimation factor is based on a contribution factor of .196, which is higher than the contribution factor announced for any quarter of 2016, and a corresponding circularity factor of 0.164070. Actual contribution and circularity factors for 2017 may increase or decrease depending on quarterly changes in program costs and the projected contribution base. Filers whose actual contribution requirements total less than $10,000 for the calendar year will be treated as *de minimis* and will receive refunds, if necessary. Filers whose actual contribution requirements total $10,000 or more are required to contribute to the universal service support mechanisms. Note that telecommunications carriers and interconnected VoIP service providers must file this Worksheet regardless of whether they qualify for the *de minimis* exemption. Telecommunications providers may qualify for one of the exemptions to filing as detailed in Sections II.A.2 or II.A.3.

Appendix B

Explanation of categories listed in Line 105

CAP/CLEC (Competitive Access Provider/Competitive Local Exchange Carrier). — Competes with incumbent local exchange carriers (ILECs) to provide local exchange services, or telecommunications services that link customers with interexchange facilities, local exchange networks, or other customers, other than Coaxial Cable providers.

Cellular/PCS/SMR (Cellular, Personal Communications Service, and Specialized Mobile Radio). — Provides primarily wireless telecommunications services (wireless telephony). This category includes all providers of real-time two-way or push-to-talk switched voice services that interconnect with the public switched network, including providers of prepaid phones and public coast stations interconnected with the public switched network. *See* 47 CFR § 80.451. This category includes the provision of wireless telephony by resale. An SMR provider would select this category if it primarily provides wireless telephony rather than dispatch or other mobile services.

Coaxial Cable. — Uses coaxial cable (cable TV) facilities to provide local exchange services or telecommunications services that link customers with interexchange facilities, local exchange networks, or other customers.

ILEC (Incumbent Local Exchange Carrier). — Provides local exchange service. An incumbent LEC or ILEC generally is a carrier that was at one time franchised as a monopoly service provider or has since been found to be an incumbent LEC. *See* 47 U.S.C. § 251(h).

IXC (Interexchange Carrier). — Provides long distance telecommunications services substantially through switches or circuits that it owns or leases.

Interconnected VoIP Provider. — Provides "interconnected VoIP service," which is a service that (1) enables real-time, two-way voice communications; (2) requires a broadband connection from the user's location; (3) requires Internet protocol compatible customer premises equipment (CPE); and (4) permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

Local Reseller. — Provides local exchange or fixed telecommunications services by reselling services of other carriers.

Non-Interconnected VoIP Provider. — Provides non-interconnected VoIP service, which is a service that (i) enables real-time voice communications that originate from or terminate to the user's location using Internet protocol or any successor protocol and (ii) requires Internet protocol compatible customer premises equipment, but (iii) is not an interconnected VoIP service.

Operator Service Provider (OSP). — Serves customers needing the assistance of an operator to complete calls, or needing alternate billing arrangements such as collect calling.

Paging and Messaging. — Provides wireless paging or wireless messaging services. This category includes the provision of paging and messaging services by resale.

Payphone Service Provider. — Provides customers access to telephone networks through payphone equipment, special teleconference rooms, etc. Payphone service providers also are referred to as payphone aggregators.

Prepaid Calling Card Provider. — Provides prepaid calling card services by selling prepaid calling cards to the public, to distributors or to retailers. Prepaid card providers provide consumers the ability to place long distance calls without presubscribing to an interexchange carrier or using a credit card. Prepaid card providers typically resell the toll service of other carriers and determine the price of the

service by setting the price of the card, assigning personal identification numbers (PINs) and controlling the number of minutes that the card can be used for. Companies who simply sell cards created by others are marketing agents and do not file.

Private Service Provider. — Offers telecommunications to others for a fee on a non-common carrier basis. This would include a company that offers excess capacity on a private system that it uses primarily for internal purposes. This category does not include SMR or Satellite Service Providers.

Satellite Service Provider. — Provides satellite space segment or earth stations that are used for telecommunications service.

Shared-Tenant Service Provider /Building LEC. — Manages or owns a multi-tenant location that provides telecommunications services or facilities to the tenants for a fee.

SMR (dispatch) (Specialized Mobile Radio Service Provider). — Primarily provides dispatch services and mobile services other than wireless telephony. While dispatch services may include interconnection with the public switched network, this category does not include carriers that primarily offer wireless telephony. This category includes LTR dispatch or community repeater systems.

Stand-Alone Audio Bridging Provider /Integrated Teleconferencing Service Provider. — Allows end users to transmit a call (using telephone lines), to a point specified by the user (the conference bridge), without change in the form or content of the information as sent and received (voice transmission).

Toll Reseller. — Provides long distance telecommunications services primarily by reselling the long distance telecommunications services of other carriers.

Wireless Data. — Provides mobile or fixed wireless data services using wireless technology. This category includes the provision of wireless data services by resale.

The Worksheet also provides boxes for "Other Local," "Other Mobile," and "Other Toll." If one of these categories is checked, the filer should describe the nature of the service it provides under the check boxes. For example, filers that provide toll service that: (1) uses ordinary customer premises equipment with no enhanced functionality; (2) originates and terminates on the public switched telephone network and (3) undergoes no net protocol conversion and provides no enhanced functionality to end users due to the provider's use of IP technology should enter "VoIP toll" in the explanation field.[84]

[84] *See AT&T IP-in-the-Middle Order,* 19 FCC Rcd 7457.

2017 FCC Form 499-A Telecommunications Reporting Worksheet (Reporting 2016 Revenues)

APPROVED BY OMB 3060-0855

>>> Please read instructions before completing.<<<

Annual Filing -- due April 1, 2017

Block 1: Contributor Identification Information

During the year, filers must refile Blocks 1, 2 and 6 if there are any changes in Lines 104 or 112. See Instructions.

101	Filer 499 ID [If you don't know your number, contact the administrator at (888) 641-8722. If you are a new filer, write "NEW" in this block and a Filer 499 ID will be assigned to you.]	
102	Legal name of filer	
103	IRS employer identification number	[Enter 9 digit number]
104	Name filer is doing business as	

105 Telecommunications activities of filer [Select up to 5 boxes that best describe the reporting entity. Enter numbers starting with "1" to show the order of importance -- see instructions.]

☐ Audio Bridging (teleconferencing) Provider		☐ CAP/CLEC	☐ Cellular/PCS/SMR (wireless telephony inc. by resale)	
☐ Coaxial Cable	☐ Incumbent LEC	☐ Interconnected VoIP	☐ Interexchange Carrier (IXC)	☐ Local Reseller
☐ Non-Interconnected VoIP	☐ Operator Service Provider	☐ Paging & Messaging	☐ Payphone Service Provider	☐ Prepaid Card
☐ Private Service Provider	☐ Satellite Service Provider	☐ Shared-Tenant Service Provider / Building LEC		☐ SMR (dispatch)
☐ Toll Reseller	☐ Wireless Data	☐ Other Local	☐ Other Mobile	☐ Other Toll

If Other Local, Other Mobile or Other Toll is checked describe carrier type / services provided:	

106.1	Affiliated Filers Name/Holding Company Name (All affiliated companies must show the same name on this line.)	Check if filer has no affiliates ☐
106.2	Affiliated Filers Name/Holding Company Name IRS employer identification number	[Enter 9 digit number]
107	FCC Registration Number (FRN) [https://fjallfoss.fcc.gov/coresWeb/publicHome.do] [For assistance, contact the CORES help desk at 877-480-3201 or CORES@fcc.gov]	[Enter 10 digit number]
108	Management company [if filer is managed by another entity]	
109	Complete mailing address of reporting entity corporate headquarters	Street1 Street2 Street3 City State Zip (postal code) Country
110	Complete business address for customer inquiries and complaints check if same address as Line 109 ☐	Street1 Street2 Street3 City State Zip (postal code) Country
111	Telephone number for customer complaints and inquiries [Toll-free number if available]	( ) - ext -

112 List all trade names used in the past 3 years in providing telecommunications. Include all names by which you are known by customers.

a		g	
b		h	
c		i	
d		j	
e		k	
f		l	

Use additional sheets if necessary. Each filer must provide all names used for telecommunications activities

PERSONS MAKING WILLFUL FALSE STATEMENTS IN THE WORKSHEET CAN BE PUNISHED BY FINE OR IMPRISONMENT UNDER TITLE 18 OF THE UNITED STATES CODE, 18 U.S.C. § 1001

2017 FCC Form 499-A Telecommunications Reporting Worksheet (Reporting 2016 Revenues)

Block 2-A: Regulatory Contact Information

201	Filer 499 ID [from Line 101]	
202	Legal name of filer [from Line 102]	
203	Person who completed this Worksheet	First MI Last
204	Telephone number of this person	( ) - ext -
205	Fax number of this person	( ) -
206	Email of this person ‖not for public release‖	
207	Contact person name, office name, and mailing address of a corporate office to which correspondence regarding this Telecommunications Reporting Worksheet should be sent. check if same name as Line 203 ☐ check if same address as Line 109 ☐	Office Attn: First name MI Last Email ‖not for public release‖ Phone ( ) - ext- Fax ( ) - Street1 Street2 Street3 City State Zip (postal code) Country
208	Billing address and billing contact person [Plan administrators will send bills for contributions to this address. Please attach a written request for alternative billing arrangements.] check if name and address same as Line 207 ☐	Company Attn: First name MI Last Email ‖not for public release‖ Phone ( ) - ext- Fax ( ) - Street1 Street2 Street3 City State Zip (postal code) Country
208.1	Email address pertaining to ITSP regulatory fee issues	‖not for public release‖

Block 2-B: Agent for Service of Process

All carriers and providers of interconnected and non-interconnected VoIP must complete Lines 209 through 213. During the year, these filers must refile Blocks 1, 2, and 6 if there are any changes in this section. See Instructions

209	D.C. Agent for Service of Process	Company Attn: First name MI Last
210	Telephone number of D.C. agent	( ) - ext -
211	Fax number of D.C. agent	( ) -
212	Email of D.C. agent	
213	Complete business address of D.C. agent for hand service of documents	Street1 Street2 Street3 City State DC Zip
214	Local/alternate Agent for Service of Process (optional)	Company Attn: First name MI Last
215	Telephone number of local/alternate agent	( ) - ext -
216	Fax number of local/alternate agent	( ) -
217	Email of local/alternate agent	
218	Complete business address of local/alternate agent for hand service of documents	Street1 Street2 City State Zip (postal code) Country

PERSONS MAKING WILLFUL FALSE STATEMENTS IN THE WORKSHEET CAN BE PUNISHED BY FINE OR IMPRISONMENT UNDER TITLE 18 OF THE UNITED STATES CODE, 18 U.S.C. § 1001

Block 2-C: FCC Registration and Contact Information	Filers must refile Blocks 1, 2 and 6 if there are any changes in this section. See Instructions.			
219 Filer 499 ID [from Line 101]				
220 Legal name of filer [from Line 102]				
221 Chief Executive Officer (or, highest ranking company officer if the filer does not have a chief executive officer)	First	MI	Last	
222 Business address of individual named on Line 221 ☐ check if same as Line 109	Street1 Street2 Street3 City	State	Zip (postal code)	Country
223 Second ranking company officer, such as Chairman (Must be someone other than the individual listed on Line 221)	First	MI	Last	
224 Business address of individual named on Line 223 ☐ check if same as Line 109	Street1 Street2 Street3 City	State	Zip (postal code)	Country
225 Third ranking company officer, such as President or Secretary (Must be someone other than individuals listed on Lines 221 and 223)	First	MI	Last	
226 Business address of individual named on Line 225 ☐ check if same as Line 109	Street1 Street2 Street3 City	State	Zip (postal code)	Country

227 Indicate jurisdictions in which the filer provides service. Include jurisdictions in which service was provided in the past 15 months and jurisdictions in which service is likely to be provided in the next 12 months.

☐ Alabama	☐ Guam	☐ Massachusetts	☐ New York	☐ Tennessee
☐ Alaska	☐ Hawaii	☐ Michigan	☐ North Carolina	☐ Texas
☐ American Samoa	☐ Idaho	☐ Midway Atoll	☐ North Dakota	☐ Utah
☐ Arizona	☐ Illinois	☐ Minnesota	☐ Northern Mariana Islands	☐ U.S. Virgin Islands
☐ Arkansas	☐ Indiana	☐ Mississippi	☐ Ohio	☐ Vermont
☐ California	☐ Iowa	☐ Missouri	☐ Oklahoma	☐ Virginia
☐ Colorado	☐ Johnston Atoll	☐ Montana	☐ Oregon	☐ Wake Island
☐ Connecticut	☐ Kansas	☐ Nebraska	☐ Pennsylvania	☐ Washington
☐ Delaware	☐ Kentucky	☐ Nevada	☐ Puerto Rico	☐ West Virginia
☐ District of Columbia	☐ Louisiana	☐ New Hampshire	☐ Rhode Island	☐ Wisconsin
☐ Florida	☐ Maine	☐ New Jersey	☐ South Carolina	☐ Wyoming
☐ Georgia	☐ Maryland	☐ New Mexico	☐ South Dakota	

228 Year and month filer first provided (or expects to provide) telecommunications in the U.S.	☐ Check if prior to 1/1/1999, otherwise:	Year	Month

PERSONS MAKING WILLFUL FALSE STATEMENTS IN THE WORKSHEET CAN BE PUNISHED BY FINE OR IMPRISONMENT UNDER TITLE 18 OF THE UNITED STATES CODE, 18 U.S.C. § 1001

Block 3: Carrier's Carrier Revenue Information

301	Filer 499 ID [from Line 101]					
302	Legal name of filer [from Line 102]					
	Report billed revenues for January 1 through December 31, 2016. Do not report any negative numbers. Dollar amounts may be rounded to the nearest thousand dollars. However, report all amounts as whole dollars. See instructions regarding percent interstate and international.	Total Revenues (a)	If breakouts are not book amounts, enter whole percentage estimates		Breakouts	
			Interstate (b)	International (c)	Interstate Revenues (d)	International Revenues (e)
	Revenues from Services Provided for Resale as Telecommunications by Other Contributors to Federal Universal Service Support Mechanisms					
	Fixed local service					
	Monthly service, local calling, connection charges, vertical features, and other local exchange service including subscriber line and					
303.1	PICC charges to IXCs					
	Provided as unbundled network elements (UNEs)					
303.2	Provided under other arrangements					
	Per-minute charges for originating or terminating calls					
304.1	Provided under state or federal access tariff					
304.2	Provided as unbundled network elements or other contract arrangement					
	Local private line & business data service					
305.1	Provided to other contributors for resale as telecommunications					
305.2	Provided to other contributors for resale as interconnected VoIP					
306	Payphone compensation from toll carriers					
307	Other local telecommunications service revenues					
308	Universal service support revenues received from Federal or state sources					
	Mobile services (i.e., wireless telephony, paging, messaging, and other mobile services)					
309	Monthly, activation, and message charges except toll					
	Toll services					
310	Operator and toll calls with alternative billing arrangements (credit card, collect, international call-back, etc.)					
311	Ordinary long distance(direct-dialed MTS, customer toll-free (800/888 etc.) service, "10-10" calls, associated monthly account maintenance, PICC pass-through, and other switched services not reported above)					
312	Long distance private line services					
313	Satellite services					
314	All other long distance services					
315	Total revenues from resale [Lines 303 through 314]					

See section III.C.2 of the instructions for the requirements applicable to revenue reported on this page. These records must be made available to the administrator or the FCC upon request.

PERSONS MAKING WILLFUL FALSE STATEMENTS IN THE WORKSHEET CAN BE PUNISHED BY FINE OR IMPRISONMENT UNDER TITLE 18 OF THE UNITED STATES CODE, 18 U.S.C. § 1001

Block 4-A: End-User and Non-Telecommunications Revenue Information

401	Filer 499 ID [from Line 101]					
402	Legal name of filer [from Line 102]					
Report billed revenues for January 1 through December 31, 2016. Do not report any negative numbers. Dollar amounts may be rounded to the nearest thousand dollars. However, report all amounts as whole dollars. See instructions regarding percent interstate and international.		Total Revenues (a)	If breakouts are not book amounts, enter whole percentage estimates Interstate (b)	 International (c)	Breakouts Interstate Revenues (d)	 International Revenues (e)
Revenues from All Other Sources (end-user, telecom. & non-telecom.)						
403	Surcharges or other amounts on bills identified as recovering State or Federal universal service contributions					
Fixed local services						
	Monthly service, local calling, connection charges, vertical features, and other local exchange service charges except for federally tariffed subscriber line charges and PICC charges					
	Traditional Circuit Switched					
404.1	Provided at a flat rate including interstate toll service – local portion					
404.2	Provided at a flat rate including interstate toll service – toll portion					
404.3	Provided without interstate toll included (see instructions)					
	Interconnected VoIP					
404.4	Offered in conjunction with a broadband connection					
404.5	Offered independent of a broadband connection					
405	Tariffed subscriber line charges, Access Recovery Charges, and PICC charges levied by a local exchange carrier on a no-PIC customer					
406	Local private line & business data service [Includes the transmission portion of wireline broadband Internet access provided on a common carrier basis.]					
407	Payphone coin revenues (local and long distance)					
408	Other local telecommunications service revenues					
Mobile services (i.e., wireless telephony, paging, messaging, and other mobile services)						
409	Monthly and activation charges					
410	Message charges including roaming and air-time charges for toll calls, but excluding separately stated toll charges					

PERSONS MAKING WILLFUL FALSE STATEMENTS IN THE WORKSHEET CAN BE PUNISHED BY FINE OR IMPRISONMENT UNDER TITLE 18 OF THE UNITED STATES CODE, 18 U.S.C. § 1001

Block 4-A: Continued

		Total Revenues (a)	If breakouts are not book amounts, enter whole percentage estimates		Breakouts	
			Interstate (b)	International (c)	Interstate Revenues (d)	International Revenues (e)
Toll services						
411	Prepaid calling card (including card sales to customers) and non-carrier distributors) reported at face value of cards					
412	International calls that both originate and terminate in foreign points		0%	100%		
413	Operator and toll calls with alternative billing arrangements (credit card, collect, international call-back, etc.) other than revenues reported on Line 412					
	Ordinary long distance (direct-dialed MTS, customer toll-free (800/888 etc.) service, "10-10" calls, associated monthly account maintenance, PICC pass-through, and other switched services not reported above)					
414.1	All, other than interconnected VoIP, including, but not limited to, itemized toll on wireline and wireless bills					
414.2	All interconnected VoIP long distance, including, but not limited to, itemized toll					
415	Long distance private line services					
416	Satellite services					
417	All other long distance services					
	Revenues other than U.S. telecommunications revenues, including information services, inside wiring maintenance, billing and collection, customer premises equipment, published directory, dark fiber, Internet access, cable TV program transmission, foreign carrier operations, and non-telecommunications revenues (See instructions)					
418.1	bundled with circuit switched local exchange service					
418.2	bundled with interconnected VoIP local exchange service					
418.3	Other					
418.4	non-interconnected VoIP revenues not included in any other category					

Block 4-B: Total Revenue and Uncollectible Revenue Information

419	Gross billed revenues from all sources (incl. reseller & non-telecom.) [Lines 303 through 314 plus Lines 403 through 418]					
420	Gross universal service contribution base amounts [Lines 403 through 411 plus Lines 413 through 417] [See Table 3 in instructions.]					
421	Uncollectible revenue/bad debt expense associated with gross billed revenues amounts shown on Line 419 [See instructions.]					
422	Uncollectible revenue/bad debt expense associated with universal service contribution base amounts shown on Line 420					
423	Net universal service contribution base revenues [Line 420 minus line 422]					

Block 5: Additional Revenue Breakouts

501	Filer 499 ID [from Line 101]	
502	Legal name of filer [from Line 102]	

Filers that report revenues in Block 3 and Block 4 must provide the percentages requested in Lines 503 through 510. See instructions for limited exceptions.

			Block 3 Carrier's Carrier (a)	Block 4 End-User Telecom (b)
		Percentage of revenues reported in Block 3 and Block 4 billed in each region of the country. Round or estimate to nearest whole percentage. Enter 0 if no service was provided in the region.		
503	Southeast:	Alabama, Florida, Georgia, Kentucky Louisiana, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, and U.S. Virgin Islands	%	%
504	Western:	Alaska, Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming	%	%
505	West Coast:	California, Hawaii, Nevada, American Samoa, Guam, Johnston Atoll, Midway Atoll, Northern Mariana Islands, and Wake Island	%	%
506	Mid-Atlantic:	Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Virginia, and, West Virginia	%	%
507	Mid-West:	Illinois, Indiana, Michigan, Ohio, and Wisconsin	%	%
508	Northeast:	Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont	%	%
509	Southwest:	Arkansas, Kansas, Missouri, Oklahoma, and Texas	%	%
510	Total:	[Percentages must add to 0 or 100.]	%	%

511 Revenues from resellers that do not contribute to universal service support mechanisms are included in Block 4-B, Line 420 but may be excluded from a filer's TRS, NANPA, LNP, and FCC interstate telephone service provider regulatory fee contribution bases. To have these amounts excluded the filer has the option of identifying such revenues below**. As stated in the instructions, you must have in your records the FCC Filer 499 ID for each customer whose revenues are included on Line 511. (See instructions.)**

		(a) Total Revenues	(b) Interstate and International
	Revenues from resellers that do not contribute to Universal Service		
512	Gross TRS contribution base amounts [Lines 403 through 417 plus Line 418.4 less Line 511]		
513	Uncollectible revenue/bad debt expense associated with TRS contribution base amounts shown on Line 512		
514	Net TRS contribution base revenues [Line 512 less Line 513]		

PERSONS MAKING WILLFUL FALSE STATEMENTS IN THE WORKSHEET CAN BE PUNISHED BY FINE OR IMPRISONMENT UNDER TITLE 18 OF THE UNITED STATES CODE, 18 U.S.C. § 1001

Block 6: CERTIFICATION: to be signed by an officer of the filer

601	Filer 499 ID [from Line 101]	
602	Legal name of filer [from Line 102]	

Section IV of the instructions provides information on which types of filers are required to file for which purposes. Any filer claiming to be exempt from one or more contribution requirements should so certify below and attach an explanation. [The Universal Service Administrator will determine which filers meet the *de minimis* threshold based on information provided in Block 4, even if you fail to so certify below.]

603 I certify that the filer is exempt from contributing to: Universal Service ☐ TRS ☐ NANPA ☐ LNP Administration ☐

Provide explanation below:

_____

_____

_____

_____

604	Please indicate whether the filer is	**State or Local Government Entity** ☐ **I.R.C. § 501 or State Tax Exempt (see instructions)** ☐
605	I certify that the revenue data contained herein are privileged and confidential and that public disclosure of such information would likely cause substantial harm to the competitive position of the company. I request nondisclosure of the revenue information contained herein pursuant to sections 0.459, 52.17, 54.711 and 64.604 of the Commission's rules.	☐

I certify that I am an officer of the above-named filer as defined in the instructions, that I have examined the foregoing report and, to the best of my knowledge, information and belief, all statements of fact contained in this Worksheet are true and that said Worksheet is an accurate statement of the affairs of the above-named company for the previous calendar year. In addition, I swear, under penalty of perjury, that all requested identification registration information has been provided and is accurate. If the above-named filer is filing on a consolidated basis, I certify that this filing incorporates all of the revenues for the consolidated entities for the entire year and that the filer adhered to and continues to meet the conditions set forth in section III-B of the instructions.

606	Signature	_____
607	Printed name of officer	First MI Last
608	Position with reporting entity	
609	Business telephone number of officer	( ) - ext -
610	Email of officer ‖not for public release‖	
611	Date	

612 Check those that apply ☐ Original April 1 filing for year ☐ New filer, registration only ☐ Revised filing with updated registration ☐ Revised filing with updated revenue data

Do not mail checks with this form. **File this form online:** http://www.usac.org/about/tools/e-file.aspx
For additional information regarding this worksheet contact: Telecommunications Reporting Worksheet information: (888) 641-8722 or via email: Form499@usac.org

PERSONS MAKING WILLFUL FALSE STATEMENTS IN THE WORKSHEET CAN BE PUNISHED BY FINE OR IMPRISONMENT UNDER TITLE 18 OF THE UNITEDSTATES CODE, 18 U.S.C. § 1001

EXHIBIT 50

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Policy and Rules Concerning the	)	
Interstate, Interexchange Marketplace	)	CC Docket No. 96-61
	)	
Implementation of Section 254(g) of the	)	
Communications Act of 1934, as amended	)	
	)	
	)	

ORDER

Adopted: November 16, 2000 **Released:** November 17, 2000

By the Chief, Common Carrier Bureau

I. INTRODUCTION

1. In 1996, the Commission adopted mandatory detariffing for the interstate, domestic, interexchange service of nondominant interexchange carriers (IXCs).[1] After two Commission orders on reconsideration and judicial review in the D.C. Circuit, the Commission's detariffing rules took effect on May 1, 2000.[2] In this Order, the Common Carrier Bureau, pursuant to a specific delegation of authority, resolves a number of issues relevant to the transition to a detariffed regime. Specifically, we:

(1) Extend the deadline for detariffing mass-market consumer services from January 31, 2001 to April 30, 2001;

(2) Affirm that the deadline for detariffing contract-type services is January 31, 2001;

(3) Decline to permit IXCs to continue filing new or revised contract tariffs that bundle domestic and international service until such time as the Commission

[1] *Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 245(g) of the Communications Act of 1934*, CC Docket No. 96-61, Second Report and Order, 11 FCC Rcd 20730 (1996) (*Second Report and Order*).

[2] *Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 245(g) of the Communications Act of 1934*, CC Docket No. 96-61, Order on Reconsideration, 12 FCC 15014 (1997)(*Reconsideration Order*); *Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act* of 1934, CC Docket No. 96-61, Second Order on Reconsideration and Erratum, 14 FCC Rcd 6004 (1999)(*Second Reconsideration Order*); *Domestic, Interexchange Carrier Detariffing Order Takes Effect*, CC Docket No. 96-61, Public Notice, DA 00-1028 (Com.Car.Bur. May 9, 2000)(*May 9 Notice*); *MCI WorldCom, Inc. v. FCC*, 209 F.3d 760 (D.C.Cir. 2000)(*MCI WorldCom*).

may have detariffed their international offerings;

(4) Permit the practice of filing a bundled domestic and international tariff with a disclaimer stating that the domestic portion of the document is for information purposes only;

(5) Require IXCs to be in full compliance with the public disclosure and Internet web-posting requirements at the time any service is detariffed, with respect to that service. With respect to new and revised contract services that have become effective since May 1, 2000, IXCs must be in full compliance with the public disclosure and web-posting requirements within 30 days of the release of this Order;

(6) Require Internet web sites and public disclosure sites to be updated no later than 24 hours after the effective date of a change in the rates, terms, or conditions of a detariffed service;

(7) Clarify that the disclosure and web-posting requirements apply to contract services as well as to mass-market offerings;

(8) Specify the filing deadlines for the required annual certification of compliance with geographic rate averaging and rate integration requirements; and

(9) Clarify the application of tariff filing requirements during the transition period.

II. DETARIFFING AND TRANSITION ISSUES

A. Transition Period

2. The Commission ordered all nondominant IXCs to cancel or permit the expiration of all tariffs for domestic, interstate, interexchange services within nine months of the effective date of the *Second Report and Order* and not to file any such tariffs thereafter.[3] The Commission also required carriers to establish public disclosure locations and web sites to distribute information on the rates, terms, and conditions of the carrier's interstate, domestic, interexchange services during the transition period.[4] In response to the D.C. Circuit's stay of the Commission's detariffing rules pending judicial review, the Commission delegated authority to the Bureau to determine the appropriate transition period and to address other transition issues when the detariffing rules became effective.[5] The court subsequently upheld the detariffing rules[6] and

[3] *Second Report and Order*, 11 FCC Rcd at 20779, para. 89.

[4] *Second Report and Order*, 11 FCC Rcd at 20745-46, para. 25; *Second Reconsideration Order*, 14 FCC Rcd at 6015-16, para. 18.

[5] *See Reconsideration Order*, 12 FCC Rcd at 15044, para. 52.

[6] *See MCI WorldCom.*

lifted its stay on May 1, 2000,[7] at which time the rules became effective. Pursuant to its delegated authority, the Bureau then adopted a nine-month transition period with a deadline of January 31, 2001 for detariffing of IXC interstate, domestic, interexchange services.[8] The Bureau also sought comment on potential modifications to the transition plan.[9]

3. In response to the Bureau's action, several parties recommend that the transition period be extended to allow the Commission an opportunity to complete a detariffing proceeding for international interexchange services, and that the transition periods for both the domestic and international interexchange services should coincide.[10] On October 18, 2000, the Commission released a Notice of Proposed Rulemaking seeking comment on whether to detariff the international interexchange services of nondominant IXCs.[11] The pleading cycle in that proceeding closes December 4, 2000.

4. The Commission has engaged in a lengthy effort to accomplish detariffing of long-distance service in large part because it concluded that tariffing both prevents the operation of competitive markets and ultimately is harmful to the interests of consumers of such services. In particular, the Commission concluded that detariffing will enhance competition among providers of interstate, domestic, interexchange services; promote competitive market conditions; eliminate possible invocation of the filed rate doctrine by nondominant IXCs; and establish market conditions that more closely resemble an unregulated environment.[12] Commenters assert, however, that the long-term benefits of detariffing may be overshadowed, in the short term, by the inconvenience and possible confusion of going through the detariffing process twice in the event the Commission decides to detariff international interexchange services. We find that, with respect to users of mass-market consumer services, we should extend briefly the deadline for detariffing such services in order to allow the Commission time to fully consider whether such an approach is appropriate. Accordingly, in order to allow the Commission to consider whether to establish a coordinated timetable for detariffing domestic and international consumer services, we extend the deadline for full detariffing of IXC interstate, domestic, interexchange services to April 30, 2001. For the contract-type services of domestic interexchange carriers, we retain the nine-month transition period that we announced in the *May 9 Notice*. We conclude that the likelihood of confusion with respect to business customers using such services is much less of a concern, and thus is clearly outweighed by the benefits of detariffing as soon as possible.

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[7] *MCI WorldCom, Inc. v. FCC*, No. 96-1459, Order (D.C.Cir. May 1, 2000).

[8] *See May 9 Notice.*

[9] A list of parties filing comments is attached as Appendix A.

[10] AT&T at 5-8; Econobill Reply at 5; Sprint at 7.

[11] *2000 Biennial Regulatory Review, Policy and Rules Concerning the International, Interexchange Marketplace*, IB Docket No. 00-202, Notice of Proposed Rulemaking, FCC 00-367 (rel. Oct. 18, 2000).

[12] *Second Report and Order*, 11 FCC Rcd at 20760, para. 52.

B. Bundled Domestic and International Services

1. Permissive Tariffing of Domestic Services

5. In the *Second Report and Order*, the Commission recognized that a number of IXCs file bundled or "mixed" services tariffs, which include both interstate, domestic, interexchange services and international services. Because the order did not require detariffing of international services, it allows carriers to cancel portions of "mixed" services tariffs that are subject to detariffing by either: (1) cancelling the entire tariff and refiling a new tariff for only those services that remain subject to tariff filing requirements; or (2) issuing revised tariff pages cancelling the material in the tariffs that relate to services subject to forbearance. In order to minimize the costs of partitioning bundled offerings, the Commission also modified its rules to permit nondominant IXCs to cross reference detariffed interstate, domestic, interexchange service offerings in their tariffs for international services for purposes of calculating discounts and minimum revenue requirements.[13] The Commission also determined in the *Second Report and Order* that it would not accept new contract tariffs or revisions to current contract tariffs for long-term service arrangements during the transition period but would accept new and revised tariffs for mass market services.

6. A number of parties filed comments stating that the cancellation of the domestic portion of bundled contract tariffs will cause confusion for customers and administrative problems for the carriers.[14] These parties recommend permissive tariffing[15] of the domestic portion of the bundled contract tariffs to alleviate potential customer confusion during the transition period and while the Commission decides the issue of international detariffing, because customers expect to find service information in one document or location.[16] Business Consumers, however, objects to these proposed modifications of the Commission's mandatory detariffing decision.[17]

---

[13] *Second Report and Order*, 11 FCC Rcd at 20780-83, paras. 91-98; *May 9 Notice* at 3.

[14] AT&T at 2-8; ASCENT at 2; Econobill at 1-2; Sprint at 2-5; Letter from Mike Del Casino, AT&T Regional Division Manager, to Magalie Roman Salas, Secretary, FCC, filed April 17, 2000.

[15] We note that the parties have used the terms "permissive detariffing" and "permissive tariffing" interchangeably to describe a regime in which carriers are permitted but not required to file tariffs for services subject to our detariffing order. The term "permissive tariffing" is used in that context for this order.

[16] AT&T at 2-8; ASCENT at 2; Econobill at 1-2; Sprint at 2-5. *See also* Econobill Reply at 3 (arguing that permissive tariffing should be allowed only where the carrier agrees to waive its rights to invoke the filed-rate doctrine). These parties also suggest that the Commission extend the transition period until such time as the Commission makes a decision regarding detariffing of the IXCs international services. The issue of the transition period is discussed at Section III.A above.

We grant Econobill's Motion to Accept Late-Filed Pleading, filed on June 15, 2000 in order to develop the record in this proceeding to the fullest extent possible. No other parties are prejudiced by this action. *See also Motion for Extension of Time to File Comments Denied*, CC Docket No. 96-61, Public Notice, DA 00-1275 (Comp.Pric.Div., June 14, 2000) (Division denied Econobill's Motion for Extension of Time to file reply comments).

[17] Business Consumers at 5.

7. We will not depart from the policy the Commission enunciated in the *Second Report and Order* that permissive tariffing of the domestic portion of bundled contract tariffs is not in the public interest because permissive tariffing would not eliminate the possible invocation of the "filed-rate" doctrine.[18] Also, permissive tariffing would merely cause added delay to the process of implementing detariffing for all domestic services. Because we find that the requested actions are inconsistent with the Commission's goals outlined in the *Second Report and Order*, we decline to adopt these suggestions.

2. Disclaimers

8. In their comments, some IXCs suggest that the problems associated with a dual regime for domestic and international services would be minimized if carriers were allowed to file the domestic portion of a contract tariff for bundled domestic and international services with a disclaimer or banner that states that the domestic portion is included only for informational purposes.[19] Several IXCs have been filing new and revised contract tariffs for bundled services with such banners.[20] Several parties cite to the potential for customer confusion during both the transition period and during the period in which Commission considers detariffing of international services as a basis for allowing banners to be included in the bundled contract tariffs.[21]

9. The Commission has already revised its rules to allow carriers to cross-reference detariffed interstate, domestic interexchange service offerings in their tariffs for international services for the purpose of calculating discounts.[22] Cross-referencing is technically sufficient to ensure that detariffing of domestic offerings does not deprive customers of the opportunity to negotiate discounts based on their total volume of calls. It is appropriate, however, to consider whether additional relief is necessary to reduce customer confusion that could arise during the period that international services are subject to tariff filing requirements and domestic services are subject to detariffing.

10. We will permit IXCs to file, as international service tariffs, tariff documents that describe bundled domestic and international contract service. Such filings must bear a banner or

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[18] *Second Report and Order*, 11 FCC Rcd at 20765-66, paras. 60-62.

[19] AT&T at 4-5; Sprint at 4-5; *see also* Letter from Mike Del Casino, Regulatory Division Manager, AT&T, to Magalie Roman Salas, Secretary, FCC, filed May 17, 2000; Letter from Leonard J. Cali, Vice President of Federal Government Affairs, AT&T, to Magalie Roman Salas, Secretary, FCC, filed April 19, 2000.

[20] *See, e.g.*, AT&T Communications International Contract Tariff No. 13904, Issued May 26, 2000, Effective May 27, 2000 at Original Title Page ("This International Contract Tariff only applies to the AT&T international services specified herein and does not apply to any AT&T domestic interstate services. Pursuant to FCC Rule 61.20, all AT&T domestic interstate services are furnished under a separate non-tariffed arrangement. Accordingly, all references in this International Contract Tariff to terms, conditions and charges relating to domestic interstate services are to be construed for the sole purpose of determining the terms, conditions and charges applicable to AT&T international service.").

[21] AT&T at 4-5; Sprint at 4-5. *But see* Comptel at 3 (arguing that banners will not be able to prevent consumer confusion).

[22] *Second Report and Order*, 11 FCC Rcd at 20783, para. 99.

disclaimer in a conspicuous place, and will be permitted only during the transition period and until the Commission makes a final determination regarding detariffing of international services. This will help minimize customer confusion and reduce the administrative burden associated with separating the two services in existing contracts and contracts currently under negotiation. Bundled domestic and international contract tariffs filed that include a disclaimer or banner in a conspicuous place are consistent with the Commission's detariffing goals, and the domestic portions of such mixed service contract offerings will not be considered to be official tariffs filed pursuant to Section 203.

11. We direct carriers that choose to use the banner approach to include: (1) a statement that the domestic services portion of the tariff has been filed for informational purposes only and is not on file pursuant to the tariff filing requirements of 47 U.S.C. § 203; (2) in the case of a revised tariff, a statement that the domestic services portion of the tariff was effectively cancelled as of the date the banner language was added to the tariff; and (3) a statement that the domestic services portions of contracts relating to bundled domestic and international contract services supersede the domestic information included in the bundled domestic and international contract tariffs on file with the Commission. The inclusion of the banner language does not affect carriers' ability to negotiate new contracts covering the domestic portions of their existing contracts.[23] Customers are free to negotiate for domestic services that are not filed in bundled domestic and international tariffs. If a carrier has already separated the domestic portion from the international portion in a mixed service contract arrangement, the banner is not required on the international tariff filed with the Commission.

C. Public Disclosure and Internet Information Requirements

1. Timing of Compliance and Updates

12. The Commission determined in the *Second Report and Order*, and affirmed in the *Second Order on Reconsideration,* that it is in the public interest for nondominant IXCs to make available to the public information on current rates, terms, and conditions for all of their interstate, domestic, interexchange services in an easy to understand format, in a timely manner, and in at least one location during regular business hours.[24] In addition, the Commission required IXCs that have established Internet websites to post that same information on-line in a timely and easily accessible manner, and to update the information regularly.[25] The Commission determined that IXCs should also maintain price and service information regarding all of the interstate, domestic, interexchange service offerings to present to the Commission upon request.[26]

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[23] *Second Report and Order*, 11 FCC Rcd at 20779-80, para. 90.

[24] *Second Report and Order*, 11 FCC Rcd at 20776-77, paras. 84-85; *Second Order on Reconsideration*, 14 FCC Rcd at 6015, para. 18. *See* 47 C.F.R. § 42.10(a).

[25] *Second Order on Reconsideration*, 14 FCC Rcd at 6015-16, para. 18. *See* 47 C.F.R. § 42.10(b).

[26] *Second Report and Order*, 11 FCC Rcd at 20777-78, para. 87. The Commission determined that this information, including documents supporting the rates, terms, and conditions of the carriers' interstate, domestic, interexchange offerings, should be retained for a period of at least two years and six months following the date the carrier stops providing the services. The Commission also required carriers to keep the records in a manner that (continued....)

13. The parties' comments include various recommended deadlines for compliance with the public disclosure and Internet web-posting requirement. Various parties recommend that carriers should comply with the requirement (1) immediately, regardless of whether services have been detariffed;[27] (2) when a service offering is detariffed and no later than the expiration of the nine-month transition period;[28] (3) at the end of the nine-month transition period;[29] (4) 30 days after the expiration of the transition period;[30] and (5) within 30 days of the Commission's final decision.[31] One party recommends that revised information and updates should be posted within 24 hours of the effective date of the new or revised rates and terms, but no later than the next business day.[32]

14. With respect to services that are permitted to remain under tariff during the transition period, we conclude that carriers should be allowed the full transition period in order to comply with the Internet and public disclosure requirements of the *Second Report and Order* and the *Second Order on Reconsideration*. We find that it is in the public interest to allow the carriers adequate time to establish public information locations and to modify their websites so as to provide accessible, comprehensive and comprehensible information about their service offerings to the public.

15. We also agree, however, with parties that argue that carriers should post information at public information sites and on Internet websites as soon as practicable after cancelling the tariff for a service. This timing is important so customers will have continuous access to information during the transition to a detariffed environment. We find, therefore, that carriers should not cancel tariffs pursuant to the *Second Report and Order* and the Commission's rules until they are able to post rate, term, and other service information regarding the services included in the cancelled tariffs at a public information location and, for those that maintain web sites, on the Internet. Consistent with section 61.87(b) of the Commission's rules,[33] when a carrier cancels its tariff, the carrier should indicate on the title page or the first page of the cancelled tariff the website address and the address of the public information site where the rates, terms, and conditions can be found.

16. Carriers that have already cancelled their tariffs must be in full compliance with

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will allow the carrier to produce them within 10 business days of the Commission's request. *See* 47 C.F.R. § 42.11.

[27] Econobill at 2.

[28] ASCENT at 3; Bell Atlantic at 2; TMIS Coalition at 3-4; Sprint at 6; WorldCom at 4-6. GSA favored compliance no later than five months into the transition period, *i.e.*, September 30, 2000. GSA Comments at 6.

[29] AT&T Reply at 4-5; GTE at 5.

[30] AT&T at 8; Cable & Wireless Reply at 1-2; SBC/SNET Reply at 3.

[31] NCTA at 7.

[32] TMIS Coalition at 4-5.

[33] 47 C.F.R. § 61.87(b).

section 42.10 of the Commission's rules within 30 days from the release of this order.[34] Likewise, carriers must be in full compliance with section 42.10 within 30 days of the release date of this order, with respect to all new and revised contract service arrangements that have become effective since May 1, 2000.

17. During the transition period, carriers cancelling their tariffs must post the rates, terms, and conditions of the cancelled tariff on their website within 24 hours after the cancellation takes effect. Both during and after the transition period, new or revised service offerings that are not permitted to be offered under tariff must be posted on the Internet websites within 24 hours after these offerings take effect.[35] Public information sites must be updated within 5 days after a tariff cancellation or new or revised service offering becomes effective.

18. The Commission's rules established in the *Second Report and Order* also require nondominant IXCs to maintain price and service information regarding all of their detariffed interstate, domestic, interexchange service offerings;[36] and to retain the information for a period of at least two years and six months after the carrier ceases to provide the service.[37] Parties are reminded that these requirements are subject to the Commission's enforcement policies.

2. Content of Public Information Disclosure

19. In the *Second Report and Order*, the Commission determined that the public information locations should contain information on a carrier's current rates, terms, and conditions for all of their interstate, domestic, interexchange services that is available to the public in an easy to understand format, in a timely manner, and in at least one location during regular business hours.[38] In the *Order on Reconsideration*, the Commission eliminated the public disclosure requirement, but later reestablished the requirement in the *Second Order on Reconsideration*. The Commission did not prescribe specific content, or require that public disclosure of this information be made in any particular format or at any particular location, except that the information must be posted on the websites of those IXCs that currently maintain them over the Internet.[39]

20. The commenters disagree as to whether the Commission requires the public disclosure of rates, terms and conditions for all services. WorldCom and SBC/SNET contend that only the standard, mass market offerings must be disclosed publicly and on the carriers'

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[34] 47 C.F.R. § 42.10.

[35] We note that, consistent with section 255 of the Telecommunications Act of 1996, 47 U.S.C. § 255, and under the Commission's rules implementing section 255, carriers' websites are required to be accessible to and usable by individuals with disabilities. 47 C.F.R. §§ 6.5(b)(1), 6.11(a).

[36] 47 C.F.R. § 42.11(a).

[37] 47 C.F.R. § 42.11(b).

[38] *Second Report and Order*, 11 FCC Rcd at 20776, para. 84; *Second Order on Reconsideration*, 14 FCC Rcd at 6015, para. 18.

[39] See *Second Order on Reconsideration*, 14 FCC Rcd at 6015, para. 18.

websites, and not individually negotiated contracts,[40] while other parties argue that information on all services must be publicly disclosed.[41] We reiterate the requirement explicitly stated in the *Second Reconsideration Order* that information on all services must be publicly disclosed, including information on services offered through individually negotiated contracts.[42]

21. Several parties also urge us to require carriers to include information that is "easy to understand," and in sufficient detail to allow consumers to make informed choices.[43] We reemphasize that carriers should disclose enough information to allow consumers to make comparisons among the various services offered by the carrier and the services offered by other carriers. Carriers, however, are not required to include more information than is currently included in their tariffs.[44]

22. Although we decline to mandate a specific format to which carriers must adhere with respect to publicly disclosed information, we nevertheless are cognizant of the need for carriers to provide this information in a format which is "easy to understand" by consumers in the business and especially the residential mass market. We recognize that this information is critical in order to allow consumers to make comparisons among the various services offered by the carrier and services offered by other carriers. We encourage carriers to work with the Commission's Consumer Information Bureau to develop appropriate formats for the required disclosures.

D. Carrier Certification

23. The Commission recognized in the *Second Report and Order* that carriers operating in competitive markets would not necessarily maintain geographically averaged and integrated rates for interstate, domestic, interexchange services, absent a legal requirement that they do so.[45] The Commission is committed to enforcing the rate averaging and rate integration requirements of the 1996 Act, and has put carriers on notice that they may be subject to civil and criminal penalties for violations of these requirements. Specifically, the Commission has directed the IXCs to file annual certifications stating that they are in compliance with their statutory geographic rate averaging and rate integration obligations.[46] The certifications must be

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[40] WorldCom at 7-9; SBC/SNET Reply at 4.

[41] ASCENT Reply at 3-5; TMIS Coalition Reply at 4.

[42] *Second Reconsideration Order*, 14 FCC Rcd at 6013-15, n.60, para. 16. *See also Second Report and Order*, 11 FCC Rcd at 20776-77, paras. 84-86.

[43] TMIS Coalition at 5; Econobill Reply at 6-7; Letter from Thomas Crowe, Attorney, Econobill, to Magalie Roman Salas, Secretary, FCC, filed June 6, 2000.

[44] *Second Report and Order*, 11 FCC Rcd at 20776, para. 84.

[45] *Second Report and Order*, 11 FCC Rcd at 20776, para. 84.

[46] *Second Report and Order*, 11 FCC Rcd at 20775, para. 83. Rule 64.1900 requires nondominant IXCs to file certifications on an annual basis that they are providing interexchange telecommunications services in compliance with the geographic rate averaging and rate integration obligations pursuant to section 254(g) of the 1996 Act. 47 C.F.R. § 64.1900. Section 254(g) requires a provider of interexchange telecommunications services to provide these services to subscribers in rural and high cost areas at rates no higher than the rates charged to its subscribers (continued....)

signed by an officer of the company under oath attesting to the company's compliance with the statutory geographic rate averaging and rate integration requirements of section 254(g) of the Act.[47]

24. WorldCom requests that carriers be allowed to file their initial certifications at the end of the transition period after all tariffs have been cancelled.[48] We find that this is a reasonable request that will reduce administrative burdens on affected carriers. We conclude, therefore, that IXCs are required to file initial certifications by May 1, 2001. Subsequently, the annual certifications should be filed on May 1 of each year.

E. Summary of Tariff Filing Requirements

25. Several parties have requested clarification of the carriers' tariff filing requirements during the transition period. WorldCom requests clarification of the prohibition on filing individually negotiated service arrangements and of the status of mass market service offerings that contain term and volume commitments during the transition period.[49] Several parties have requested clarification of the carriers' obligations with respect to contract tariffs that include both domestic and international services.[50]

26. Pursuant to the *Second Report and Order*, carriers may file new tariffs and revisions to existing tariffs for mass market, interstate, domestic, interexchange services during the transition period, but must discontinue this practice at the end of the transition period.[51] This includes mass-market services that contain volume and term requirements, but excludes contract tariffs such as AT&T's Tariff 12 options, MCI's special customer arrangements, and Sprint's custom network service arrangements.

27. Carriers are required to file tariffs for international services, including those in mixed service tariffs, during the transition period and until the Commission issues a final decision regarding detariffing of international services. Carriers may file the domestic portion of mixed service contract tariffs during the transition period and until a final decision regarding international detariffing, as long as the tariff includes the disclaimer or banner described in Section II. B.2 above. Carriers must have on file at the Commission an international tariff that reflects the international portion of a mixed services contract. Finally, carriers may file tariffs for

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in urban areas, and to provide these services to subscribers in each State at rates no higher than the rates charged to its subscribers in any other State. 47 U.S.C. § 254(g).

[47] 47 C.F.R. § 64.1900(a) and (b). *See Implementation of Section 254(g) of the Communications Act of 1934*, 11 FCC Rcd 9564 (1996) (*Geographic Rate Averaging Order*).

[48] WorldCom at 9-11.

[49] WorldCom at 11-15.

[50] Business Consumers at 4-6. *See also* Letter from Mike Del Casino, Regional Division Manager, AT&T, to Magalie Roman Salas, Secretary, FCC, filed April 11, 2000; Letter from Mike Del Casino, Vice President Federal Government Affairs, AT&T, to Magalie Roman Salas, Secretary, FCC, filed April 19, 2000; Letter from Michael Fingerhut, General Attorney, Sprint, to Magalie Roman Salas, Secretary, FCC, filed May 22, 2000.

[51] *Second Report and Order*, 11 FCC Rcd at 20780, para. 90.

dial-around 1+ services or "casual calling" services[52] and for services provided to new customers until a written contract is executed, but for no longer than 45 days.[53] The casual calling services that may continue to be tariffed are those services for which the customer and carrier do not have an underlying contractual relationship because of the unique technological concerns with dial-around services that are not conducive to the establishment of a written contract.[54]

III. ORDERING CLAUSES

28. Accordingly, IT IS ORDERED that pursuant to the authority specifically delegated to the Common Carrier Bureau in the *Second Report and Order*, and under Sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, the deadline for detariffing mass-market consumer services IS EXTENDED from January 31, 2001 to April 30, 2001.

29. IT IS FURTHER ORDERED that pursuant to the authority delegated under Sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, Econobill Corporation's Motion to Accept Late-Filed Pleading IS HEREBY GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Dorothy T. Attwood

Dorothy T. Attwood
Chief, Common Carrier Bureau

[52] Dial around 1+ calls are calls made by accessing the IXC through the IXC's carrier access code (CAC) in the absence of a presubscription agreement with the IXC. A CAC is a five or seven digit access code that enables callers to reach any carrier, presubscribed or otherwise, from any telephone. 47 C.F.R. § 61.19 (b).

[53] 47 C.F.R. § 61.19(c).

[54] *Reconsideration Order*, 12 FCC Rcd at 15036, para. 36.

APPENDIX A
List of Parties

Comments

Ad Hoc Telecommunications Users Committee (Business Consumers)
Association of Communications Enterprises (ASCENT)
AT&T Corporation (AT&T)
Bell Atlantic Long Distance Companies (Bell Atlantic)
Competitive Telecommunications Association (Comptel)
Econobill Corporation (Econobill)
General Services Administration (GSA)
GTE Service Corporation (GTE)
National Telephone Cooperative Association (NTCA)
Sprint Communications Company, L.P. (Sprint)
Telecommunications Management Information Systems Coalition (TMIS Coalition)
WorldCom, Inc. (WorldCom)

Reply Comments

ASCENT
American Petroleum Institute (API)
AT&T
Bell Atlantic
Business Consumers
Cable & Wireless, Inc. (Cable & Wireless)
TMIS Coalition
Econobill
GSA
GTE
SNET America, Inc. and Southwestern Bell Telephone Company (SBC/SNET)
Sprint
WorldCom